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# **THE FEDERAL PENAL CODE OF 1910**



U.S. Laws, statutes, etc. Codes, Criminal  
~~Duplicate~~

THE  
FEDERAL PENAL CODE <sup>of</sup>

IN FORCE JANUARY 1, 1910

TOGETHER WITH OTHER STATUTES HAVING PENAL  
PROVISIONS IN FORCE DECEMBER 1, 1908

ANNOTATED BY

GEORGE F. TUCKER

JOINT AUTHOR OF "GOULD AND TUCKER'S NOTES ON THE  
UNITED STATES STATUTES"

AND

CHARLES W. BLOOD

OF THE BOSTON BAR

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## PREFACE

THE authors have followed the admirable arrangement of the copy of the Criminal Code with an appendix of other statutes having penal provisions, which was issued by the joint Committee of Congress on the Revision of the Laws under date of August 1, 1909.

Great care has been used in the collection of cases, and it is hoped that the book may be of service to the profession.

G. F. T.  
C. W. B.

Boston, Oct. 20, 1910.





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# THE FEDERAL PENAL CODE OF 1910

The Act of March 4, 1909, c. 321 (35 St. 1088), entitled "An Act To codify, revise, and amend the penal laws of the United States" is as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the penal laws of the United States be, and they hereby are, codified, revised, and amended with title, chapters, headnotes, and sections entitled, numbered, and to read as follows:

## CRIMES

### CHAPTER ONE

#### OFFENSES AGAINST THE EXISTENCE OF THE GOVERNMENT

##### SECTION

1. Treason
2. Punishment of treason
3. Misprison of treason
4. Inciting or engaging in rebellion or insurrection
5. Criminal correspondence with foreign governments.

##### SECTION

6. Seditious conspiracy.
7. Recruiting soldiers or sailors to serve against the United States
8. Enlistment to serve against the United States

SECTION 1. Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason. Treason defined

This section is identical with U. S. Rev. Sts. § 5331. Treason is a breach of allegiance and can be committed only by one who owes allegiance, perpetual or temporary. The words "owing allegiance to the United States" do not affect the sense of the section. The construction would be precisely the same were they omitted. *United States v. Wiltberger*, 5 Wheat. 76, 97, 5 L. ed. 37. Treason against the United States may be committed by any one resident or sojourning within its territory and under the protection of its laws, whether a citizen or an alien. *Re Charge to Grand Jury*, 5



**Treason defined** Penn. L. J. Rep. 55, 4 Am. L. J. 83. Aliens domiciled here owe a temporary allegiance to the government, and being bound to obey such of its laws as do not immediately relate to citizenship, are equally amenable with citizens, so long as they reside here, for any infraction thereof. Aliens domiciled in this country prior to the Civil War, who gave aid and comfort to the insurgents, were subject to prosecution for treason. The manufacture of saltpetre in Alabama by aliens domiciled there, and its sale to the Confederate States with knowledge that it was to be used by them in prosecuting the war, was treason or misprision thereof. *Carlisle v. United States*, 16 Wall. 147, 21 L. ed. 426; *Hanauer v. Doane*, 12 Id. 342, 20 L. ed. 439. But aiding, assisting, and abetting another nation engaged in a maritime war with the United States is not treason in an alien within the United States if he is commissioned by the other power. 1 A. G. Op. 84. That an unnaturalized alien cannot commit treason, see *United States v. Villato*, 2 Dall. 370, 1 L. ed. 419.

Levying war embraces any combination, or conspiring together, or insurrection to prevent, or oppose by force, or intimidation, the enforcement of any provision of the Constitution, or for the purpose of resisting the execution of the laws of the United States, or overthrowing the government, or rebelling against its authority, if the opposition in pursuance of the combination is forcible. *Re Charge to Grand Jury*, 5 Penn. L. J. Rep. 55, 4 Am. L. J. 83; *United States v. Mitchell*, 2 Dall. 348, 1 L. ed. 410, 26 Fed. Cas. 1277; *Shortridge v. Macon*, Chase's Dec. 136, 22 Fed. Cas. 20. The assemblage of a body of armed men, large or small, in military array for a treasonable purpose, and every step taken by any one of them in part performance of such purpose, are overt acts of treason in levying war. Of such a nature is the occupation of a fortress belonging to the government, on the part of each and every one engaged in the undertaking, though such occupation was not resisted.

United States v. Greiner, 4 Phila. 396. So is the assemblage of a body of men for the purpose of forcefully revolutionizing the government established in any of the Territories, though such assembling be for some other project to be thereafter accomplished. *Re Bollman*, 4 Cranch, 75, 2 L. ed. 554; *United States v. Burr*, 1 Burr's Trial, 14. The meeting of particular bodies of men and their going from a place of partial, to one of general, rendezvous is also a levying of war. *Id.* See further *United States v. Burr*, 4 Fed. Cas. 55. If war has been levied, all who aid in its prosecution by performing any act to promote the common purpose are guilty of treason. The minuteness of such act, or the remoteness from the scene of activities of the person who performs it, does not affect his guilt. *United States v. Great-house*, 2 Abb. C. C. 364. One may commit treason without being a personal actor in any violence. If he directs, aids, abets, counsels, or countenances it, he is guilty, although he is not present in person at the time of the actual perpetration. *United States v. Burr*, 2 Burr's Trial, 405, 25 Fed. Cas. 2, 52, 55, 210; *Re Charge to Grand Jury, supra*. But the mere enlistment of men for the purpose of serving against the government is not a levying of war. *United States v. Burr*, 1 Burr's Trial, 14; *Re Bollman, supra*. Nor is a bare conspiracy without an overt act. *United States v. Mitchell, supra*. Nor is a conspiracy to resist the execution of a law in particular instances, as for a personal or private purpose, notwithstanding the numbers engaged or the force they may employ. *United States v. Hoxie*, 1 Paine, 265, 26 Fed. Cas. 397.

"*Adheres to their enemies.*" One who went from the British squadron to the American shore, for the purpose of peaceably procuring food for the British, was not guilty of treason. The crime cannot be committed by the will alone. But if there was an intent to join in hostilities against the United States, going towards the shore would have been an

Treason  
defined

**Treason defined** overt act of adhering to the enemy though no other act was done. And so would the act of carrying provisions towards the enemy with intent to supply him, though such intention should be defeated. *United States v. Pryor*, 3 Wash. C. C. 234, 27 Fed. Cas. 628.

*"Giving them aid and comfort."* A citizen of a loyal State, who voluntarily joined in the rebellion, and bore arms against the general government, gave aid and comfort to its enemies. *Gearing v. United States*, 3 Ct. Cl. 165. Purchasing a vessel, guns, and ammunition, preparing the vessel for sea and for service in aid of the enemies of the government, after war has been levied against it, are overt acts of treason. It is presumed that such acts, done in furtherance of the purposes of such enemies, give them aid and comfort, whether the vessel in fact sails or not, or whether, if she sails, her cruise is successful or not. It is no defense that such acts were done under a letter of marque issued by an assumed government, so long as such government has not been recognized by the United States. *United States v. Greathouse*, 2 Abb. C. C. 364, 26 Fed. Cas. 18. Delivering prisoners and deserters to the enemy is treason, and a treasonable act is excusable only when it is performed under personal fear of death. *United States v. Greiner*, 4 Phila. 396; *United States v. Hodges*, 1 Brun. Coll. Cas. 465, 2 Wheeler's Cr. Cas. 477, 26 Fed. Cas. 332. So long as acts are treasonable it is immaterial whether they are committed within the United States or elsewhere. *United States v. Craig*, 28 F. R. 795. The constitutional provision that there shall be no conviction for treason, unless upon the testimony of two witnesses, or on confession, does not apply to preliminary hearings and commitment. *United States v. Greiner, supra*. For a further discussion of the law of treason, see generally Whart. St. Tr. 102 *et seq.*; 2 Curtis, 630; *Re Bollman*, 4 Cranch, 75, 2 L. ed. 554; *United States v. Hanway*, 2 Wall. Jr. 139. In *United States v. The*

Insurgents, 2 Dall. 335, 1 L. ed. 404, certain objections were raised to the panels. See further on treason, *United States v. Cathcart*, 1 Bond, 556, 25 Fed. Cas. 344; *United States v. Vigol*, 2 Dall. 346, 1 L. ed. 409, 28 Fed. Cas. 376; Charge to Grand Jury, 2 Curt. 630, 30 Fed. Cas. 1024; *The Law of Treason*, 4 Blatch. 518, 30 Fed. Cas. 1032; Charge to Grand Jury, 5 Blatch. 549, 30 Fed. Cas. 1034; Charge to Grand Jury, 1 Bond, 609, 30 Fed. Cas. 1036; Charge to Grand Jury, 1 Sprague, 602, 30 Fed. Cas. 1039; Charge to Grand Jury, 2 Sprague, 292, 30 Fed. Cas. 1042; Charge to Grand Jury, 2 Sprague, 285, 30 Fed. Cas. 1049; Charge to Grand Jury, 1 Story, 614, 30 Fed. Cas. 1046; Charge to the Grand Jury, 2 Wall. Jr. 134.

**Treason defined**

SECTION 2. Whoever is convicted of treason shall suffer death; or at the discretion of the court, shall be imprisoned not less than five years and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real and personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States.

**Punishment for treason**

This section is identical with U. S. Rev. Sts. § 5332, except that the words "at hard labor" are omitted.

The effect of this section upon the Act of 1790 is discussed and determined in *United States v. Greathouse*, 2 Abb. C. C. 364. See also *Windsor v. McVeigh*, 93 U. S. 274, 23 L. ed. 914; *Wallach v. Van Riswick*, 92 Id. 202, 23 L. ed. 473; *Confiscation Cases*, 20 Wall. 92, 22 L. ed. 320.

SECTION 3. Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals, and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be imprisoned not more than seven years, and fined not more than one thousand dollars.

**Misprision of treason defined**

**Misprision  
of treason  
defined**

This section is identical with U. S. Rev. Sts. § 5333. See *United States v. Wiltberger*, 5 Wheat. 76, 97, 5 L. ed. 37; *Confiscation Cases*, 20 Wall. 92, 22 L. ed. 320, 1 Woods, 221, 6 Fed. Cas. 270; *United States v. Tract of Land*, 1 Woods, 475, 28 Fed. Cas. 203; *Charge to Grand Jury*, 4 Blatch. 518.

**Inciting,  
etc., rebel-  
lion or in-  
surrection**

SECTION 4. Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be imprisoned not more than ten years, or fined not more than ten thousand dollars, or both; and shall, moreover, be incapable of holding any office under the United States.

This section is identical with U. S. Rev. Sts. § 5334. It is sufficient if an indictment follows the language of the statute, and it is unnecessary now to use the specific term "levying war." *United States v. Greathouse*, 2 Abb. C. C. 364. An acquittal before a court-martial cannot be pleaded in bar of an indictment under this section, though the offense charged in both be substantially the same. *United States v. Cashiel*, 1 Hughes, 552. The act of dispatching an American vessel in ballast from a port of the United States with an immediate destination to a neutral port, and an ulterior destination with cargo taken in at such neutral port to a blockaded port, is an offense against the United States under this section. 10 A. G. Op. 513. See *Hart's Case*, 16 Ct. Cl. 459; *Pargoud's Case*, 4 Id. 337.

**Criminal  
correspond-  
ence with  
foreign gov-  
ernment**

SECTION 5. Every citizen of the United States, whether actually resident or abiding within the same, or in any place subject to the jurisdiction thereof, or in any foreign country, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of or resident within the United States or

in any place subject to the jurisdiction thereof, and not duly authorized, counsels, advises, or assists in any such correspondence with such intent, shall be fined not more than five thousand dollars and imprisoned not more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

**Criminal  
correspond-  
ence with  
foreign gov-  
ernment**

This section is the same as U. S. Rev. Sts. § 5335, except that the words "or in any place subject to the jurisdiction thereof" are twice inserted. See *United States v. Craig*, 28 F. R. 795, 801; *American Banana Co. v. United Fruit Co.* 213 U. S. 347, 356, 53 L. ed. 826.

**SECTION 6.** If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

**Seditious  
conspiracy**

This section is practically the same as U. S. Rev. Sts. § 5336, except that the words "or in any place subject to the jurisdiction of the United States" are added. This section is constitutional, and it includes a conspiracy or agreement of two or more persons to drive the Chinese out of the United States, or to maltreat or intimidate them with a view of constraining them to depart therefrom. *Re Impanelling Grand Jury*, 11 Sawyer, 522, 26 F. R. 749. The first clause of this section implies force against the government as a government. To constitute an offense under it the authority of the government must be opposed; force must be brought to resist some positive assertion of authority by the government. A mere violation of law is not enough; there must be an attempt to prevent the actual exercise of

**Seditious  
conspiracy**

authority. Where force is exerted in opposition to a class of persons who have a right to look to the government for protection against such wrongs, and not in opposition to the government while actually engaged in the attempt to afford that protection, the case is not within the first clause. *Baldwin v. Franks*, 120 U. S. 678, 30 L. ed. 766. Under the second clause the government must be prevented, hindered, or delayed in executing its laws. It is not enough to bring a case within it that the laws were set at defiance. There must be a forcible resistance to the authority of the United States while endeavoring to carry the laws into execution. Force exerted against a class of people contrary to law is not such an offense. *Id.*, reversing *Re Baldwin*, 27 F. R. 187. See *Wright v. United States*, 108 Id. 805; *In re Grand Jury*, 62 Id. 837; *Charge to Grand Jury*, 1 Bond, 609.

**Recruiting  
for service  
against  
United  
States**

SECTION 7. Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same, or opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States, shall be fined not more than one thousand dollars and imprisoned not more than five years.

This section is practically the same as U. S. Rev. Sts. § 5337, except that the words "or in any place subject to the jurisdiction thereof" are twice added. *Charge to Grand Jury*, 1 Bond, 609. Also 2 Sprague, 292.

**Enlisting  
to serve  
against  
United  
States**

SECTION 8. Every person enlisted or engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined one hundred dollars and imprisoned not more than three years.

This section is the same as U. S. Rev. Sts. § 5338, except that the word "person" is substituted for "soldier or sailor," and the words "or in any place subject to the jurisdiction thereof" are added.

## CHAPTER TWO

## OFFENSES AGAINST NEUTRALITY

| SECTION   | SECTION                                     |
|---|---|
| 9. Accepting a foreign commission                                       | 14. Enforcement of foregoing provisions     |
| 10. Enlisting in foreign service  | 15. Compelling foreign vessels to depart    |
| 11. Arming vessels against people at peace with the United States       | 16. Armed vessels to give bond on clearance |
| 12. Augmenting force of foreign vessel of war                           | 17. Detention by collectors of customs      |
| 13. Military expeditions against people at peace with the United States | 18. Construction of this chapter            |

THE United States courts have authority, under the general law of nations, and in the absence of any Act of Congress, to decree restitution of property captured in violation of their neutrality. *The Estrella*, 4 Wheat. 298, 4 L. ed. 574; *The Gran Para*, 7 Id. 471, 5 L. ed. 501. The Government is bound of its own motion to use diligence to observe all obligations of neutrality; such international obligations are not increased or lessened by the enactment of neutrality laws. 21 A. G. Op. 267. The furnishing of money to be used on behalf of a foreign people struggling for independence, but not in supplying arms and munitions of war, is not in contravention of the neutrality laws. *Bailey v. O'Mahoney*, 33 N. Y. Supr. Ct. 239. Such laws in the United States and Great Britain do not forbid and punish combinations to aid or abet foreign rebellions, which combinations are a violation of national comity (8 A. G. Op. 216, 375, 472); nor do they prohibit vessels going to sea from being armed for defense. *British Consul v. The Mermaid*, Bee Adm. 69. Commanders and officers of foreign vessels who violate these laws, may be prosecuted



in our courts. 4 A. G. Op. 336; 3 Id. 747. The neutrality Act has been uniformly treated by the executive department and by judges of the United States courts as embracing warlike enterprises set on foot in this country against a friendly power at peace with all the world. The language of the Act warrants that interpretation. *United States v. O'Sullivan*, 9 N. Y. Leg. Obs. 257. See *Charges to the Grand Jury in 5 Blatch*. 556, 30 Fed. Cas. 1017; 5 McLean, 306, 30 Fed. Cas. 1021; 5 McLean, 249, 30 Fed. Cas. 1020; 2 McLean, 1, 30 Fed. Cas. 1018; 2 Curt. 630, 30 Fed. Cas. 1024; 29 Am. L. Rev. 539. As to validity of neutrality laws, see *United States v. Arjona*, 120 U. S. 479, 488, 30 L. ed. 728.

Accepting  
foreign  
commission  
to serve  
against  
friendly  
power

SECTION 9. Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be fined not more than two thousand dollars and imprisoned not more than three years.

This section is practically identical with U. S. Rev. Sts. § 5281. This Title "was undoubtedly designed in general to secure neutrality in wars between two other nations, or between contending parties recognized as belligerents, but its operation is not necessarily dependent on the existence of such state of belligerency." *Wiborg v. United States*, 163 U. S. 632, 41 L. ed. 289, 73 Fed. Rep. 159. The claimant of a right of asylum in a foreign country, with which United States has a treaty, but who, having been there kidnapped, is here tried and convicted in a State court, cannot invoke the protection of the United States Supreme Court, on error, because of the violation of such right of asylum, or on the ground of a denial of due process of law. *Ker v. Illinois*, 119 U. S. 436, 30 L. ed. 421. The right of refuge and asylum in a foreign embassy exists in the civil-

ized nations of Europe or their ships of war, or in the Spanish-American states, and merchant vessels clearly have no right of asylum. See Snow's Int. Law, 139-150; also 7 Political Science Quarterly (1892), pp. 1, 197, 397; John Bassett Moore, upon The Case of the Salvadorean Refugees, in 29 Am. L. Rev. 1, 6. The right of asylum was, however, recently maintained by Portugal in support of the refuge accorded in 1894 at Rio Janeiro by her war vessels to the fugitive Brazilian insurgents, and this action led to a rupture of diplomatic relations between the two governments. See 10 Law Quarterly Rev. 256.

Accepting  
foreign  
commission  
to serve  
against  
friendly  
power

SECTION 10. Whoever, within the territory or jurisdiction of the United States, enlists, or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be fined not more than one thousand dollars and imprisoned not more than three years.

Enlisting  
in foreign  
service

This section is practically identical with U. S. Rev. Sts. § 5282. *Stoughton v. Taylor*, 2 Paine, 665, 667; *United States v. Hertz*, 3 Pitts. L. J. 194, 26 Fed. Cas. 293. This applies to foreign consuls raising troops here for the military service of Great Britain. 7 A. G. Op. 367, 4 Id. 336. It does not apply to those who go abroad for foreign enlistment, or to those who transport such persons. *United States v. Kazinski*, 2 Sprague, 7. But if an association is originated beyond the sea to concert an expedition thence to commit hostilities against a friendly power, it is unimportant whether the persons engaged therein take the whole vessels themselves or depart hence as passengers. *Ex parte Needham*, Pet. C. C. 487, 17 Fed. Cas. 1274.

One does not violate § 5282 by leaving this country with intent to enlist in the military service of a foreign government. Neither is it an offense under it to transport persons

**Enlisting  
in foreign  
service**

out of this country with their own consent, they having an intention to so enlist. But if such persons were hired or retained to go abroad with the intent to be so enlisted, it would be otherwise. The word "soldier" must be understood in its ordinary sense as one enlisted to serve on land in a land army. An indictment which charges several persons jointly in the same count with enlisting contrary to this section is bad. *United States v. Kazinski*, 2 Sprague, 7, 26 Fed. Cas. 682.

**Arming  
vessels  
against  
friendly  
powers**

SECTION 11. Whoever, within the territory or jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States for any vessel, to the intent that she may be so employed, shall be fined not more than ten thousand dollars and imprisoned not more than three years. And every such vessel, her tackle, apparel and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer and the other half to the use of the United States.

This section is identical with U. S. Rev. Sts. § 5283, except that in the first line the words "territory or jurisdiction" are substituted for "limits." The phrase "any foreign prince or state" does not include a pretended foreign state not yet recognized by our government, or that to which the new state belongs. *Gelston v. Hoyt*, 3 Wheat. 246, 4 L. ed. 381. To come under this section, the expedition may be organized and dispatched from our ports in separate parts. *United States v. The Mary N. Hogan*, 18 F. R. 529. See *Id.* 88; 17 *Id.* 813; *United States v. 200 Boxes*, 20 *Id.* 50; *The Alfred*, 3 Dall. 307, 1 L. ed. 614.

Where a vessel built, equipped, and owned in the United States captures the property of subjects of a nation in peace with the United States, such capture is illegal; and the property, if brought within our territorial limits, will be restored to the original owners. *La Conception*, 6 Wheat. 235, 5 L. ed. 249; *The Gran Para*, 7 Id. 471, 5 L. ed. 501; *The Santa Maria*, Id. 490, 5 L. ed. 505; *The Arrogante Barcelones*, Id. 496, 5 L. ed. 507. This section prohibits only hostile voyages, not commercial ventures, such as the carrying of arms for a belligerent's use to a port in its possession. *The Santissima Trinidad*, 7 Wheat. 283, 340, 5 L. ed. 454; 1 Kent Com. 142; *The City of Mexico*, 24 F. R. 33, 25 Id. 924; *United States v. 214 Boxes of Arms*, 20 Id. 50. Nor does it apply to gunboats building in our ports for Spain, to be employed against Cuba. 13 A. G. Op. 177. This section does not prohibit the landing of a cargo contraband of war on the shores of one belligerent at a point not blockaded. *The Florida*, 4 Ben. 452, 9 Fed. Cas. 321. Nor does a vessel, by merely engaging in *bona fide* contraband trade, violate the statute or our neutral obligations, even if the trade be in armed vessels. *The Bermuda*, 3 Wall. 551, 18 L. ed. 200; *The Carondelet*, 37 F. R. 799. To constitute an offense, the vessel must be fitted out and armed with the specified intent. The statute does not prohibit the sale of unarmed vessels. *United States v. Skinner*, 1 Brun. Coll. Cases, 446, 2 Wheeler's Crim. Cas. 232, 27 Fed. Cas. 1123. This section includes all cases of vessels armed within American ports by one of the belligerent powers, to act as cruisers against another belligerent power with which the United States are at peace. Converting a merchant ship into a vessel of war must be deemed an original outfit. *United States v. Guinet*, 2 Dall. 321, 1 L. ed. 398; 5 A. G. Op. 92, 3 Id. 738, 741. The intention with respect to the employment of the vessel must be formed before she leaves the country, and this

Arming  
vessels  
against  
friendly  
powers

Arming  
vessels  
against  
friendly  
powers

must be a fixed intention. *United States v. Quincy*, 6 Pet. 445, 8 L. ed. 458; *Moodie v. The Alfred*, 3 Dall. 307, 319, 1 L. ed. 614; *United States v. Guinet*, 2 Id. 321, 1 L. ed. 398; *The Meteor*, 1 Am. L. Rev. 401, 17 Fed. Cas. 178. But it is not necessary that the vessel should be armed or manned for the purpose of committing hostilities before so leaving, if she is intended to be so fitted subsequently. *The City of Mexico*, 28 F. R. 148. And if the government files two libels against the same vessel, the one in prize, and the other in forfeiture, it cannot be required to elect between them. *Id.* The intent must be formed within the limits of the United States. *The Laurada*, 98 F. R. 983, 85 Id. 760.

An informer, in the legal as well as the ordinary sense of the term, is he who gives the information which leads directly to the seizure and condemnation, regardless of the questions of evidence furnished or interest taken in the prosecution. If the officer informed seizes upon the information given, that act vests an inchoate right in the informer who has given the information upon which the seizure was made, which is consummated by a condemnation. Officers who conveyed information received by them in their capacities as such to other officers, and gave no other information, have no rights as informers. *The City of Mexico*, 32 F. R. 105.

The entire crew of a vessel may share as informers; but United States naval officers, or consular agents who merely investigate in pursuance of orders, and report the knowledge thus acquired, do not gain the rights of informers. *Id.*; *Sawyer v. Steele*, 3 Wash. C. C. 464, 21 Fed. Cas. 583; *The Chapman*, 4 Sawyer, 501, 5 Fed. Cas. 471.

The forfeiture of a vessel in a civil suit *in rem* for her condemnation does not depend upon the conviction of a person or persons for doing the acts denounced; the word "people," as here used in connection with the words "colony" and

"district," covers any insurgent or insurrectionary "body of people acting together, undertaking and conducting hostilities," although its belligerency has not been recognized. *The Three Friends*, 166 U. S. 1, 49, 56, 41 L. ed. 897, 78 Fed. Rep. 175. "Neutrality, strictly speaking, consists in the abstinence from any participation in a public, private, or civil war, and in impartiality of conduct toward both parties; but the maintenance, unbroken, of friendly relations between two powers, when the domestic peace of one of them is disturbed, is not neutrality in the sense in which the word is used when the disturbance has acquired such head as to have demanded the recognition of belligerency." Fuller, C. J., in *Ibid.*, 166 U. S. 52. See 31 Am. L. Rev. 456.

Arming  
vessels  
against  
friendly  
powers

Section 5283 appears to presuppose two or more foreign belligerent powers, and not factions unrecognized by this government. *The Conserva*, 38 Fed. Rep. 431; *The Itata*, 56 Id. 505, 49 Id. 646; see 13 A. G. Op. 179. The proceeding under it is an ordinary suit in admiralty. *The Conserva*, *supra*. Unrecognized insurgents are no more than pirates as to depredations by them upon citizens or vessels of neutral nations. See *The Huascar*, 3 Wharton's Digest, 474; *Snow's Int. Law*, 205; 16 Law Mag. & Rev. (4th Series) 164, 179; 19 Id. 32. Sections 5283, 5286 do not apply to arms and munitions of war purchased here and carried to insurgents in a foreign country but not forming a part of the vessel's furnishings: *The Itata*, *supra*; *The Carondelet*, 37 Fed. Rep. 799; *United States v. Trumbull*, 48 Id. 99; *United States v. The Resolute*, 40 Id. 543; or to a vessel merely employed to transport them to a vessel which is so fitting out: *United States v. The Robert and Minnie*, 47 Fed. Rep. 84; or to money contributed to aid a foreign insurrection. *Bailey v. O'Mahoney*, 33 N. Y. Supr. Ct. 239.

The intent is material, and is sufficient to constitute the

**Arming  
vessels  
against  
friendly  
powers**

statutory offense, the actual arming of the vessel here not being necessary. *The City of Mexico*, 28 Fed. Rep. 148; *The Conserva*, 38 Id. 431. The plan and intent must be formed here and not after the vessel reaches a foreign port. *The City of Mexico*, 24 Fed. Rep. 33; see 25 Id. 924, 32 Id. 105.

**Augment-  
ing force  
of foreign  
armed  
vessel**

SECTION 12. Whoever, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined not more than one thousand dollars and imprisoned not more than one year.

This section is practically identical with U. S. Rev. Sts. § 5285. An augmentation of force, under this section, includes the taking on of a crew either of native American citizens or foreigners domiciled here (*The Alerta v. Moran*, 9 Cranch, 359, 3 L. ed. 758); also the increase here of the number or caliber of a foreign cruiser's guns, but not the repair of such vessel or her bottom. 5 A. G. Op. 336; *United States v. Grassin*, 3 Wash. C. C. 65, 26 Fed. Cas. 10. It is immaterial whether the persons enlisted by a foreign armed vessel were native American citizens or foreigners domiciled within the United States, since neither the law of nations nor the Acts of Congress recognize any distinction, except in respect to subjects of the State in whose service they are so enlisted, transiently within the United States. *The Alerta*, 9 Cranch, 359, 3 L. ed. 758.

SECTION 13. Whoever, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be fined not more than three thousand dollars and imprisoned not more than three years.

Organizing  
military  
expedition  
against  
friendly  
power

This section is practically identical with U. S. Rev. Sts. § 5286. 1 A. G. Op. 57. There must be an overt act. *United States v. Lumsden*, 1 Bond, 5; *United States v. Pirates*, 5 Wheat. 184, 5 L. ed. 64. It is an offense against this section for the officers of an American vessel who are informed of the character of the cargo with which she is loaded, and the purpose thereof, to transport arms from a port of the United States to a foreign port to be used against a power with which this government is at peace, and to take on men after leaving that port. *United States v. Rand*, 17 F. R. 142. The words "to be carried on from thence" are employed in the sense of carrying out, or forward, from thence. *United States v. Rand*. Id.

This section does not require that the expedition should have actually set out, or any particular number of men, the crime being completed by the organization only. *United States v. Ybanez*, 53 Fed. Rep. 536; 17 A. G. Op. 242. This section creates two offenses, — the setting on foot, within this country, of a military expedition, and the providing of means therefor, such as transportation. *United States v. Hart*, 78 Fed. Rep. 868, 74 Id. 724. As to informers under these statutes, see *The City of Mexico*, 32 Fed. Rep. 105; *United States v. The Resolute*, 40 Id. 543; *The Chapman*, 4 Sawyer, 501. Section 5286 does not depend upon a state of belligerency or neutrality. *The Three Friends*, 166 U. S. 1, 78, 41 L. ed. 897; *United States v. Nunez*, 82 Fed. Rep. 599.

Military expeditions originating within the United States, and to be carried on from this country, are prohibited by



Organizing  
military  
expedition  
against  
friendly  
power

§ 5286. But the sending of a ship from a foreign country to the United States, to take on board arms and ammunition purchased here, and carry them to the foreign State, is not the preparing or setting on foot of such an expedition or enterprise within the meaning of the statute. *United States v. Trumbull*, 48 Fed. Rep. 99; *The Itata*, 49 Id. 646; *Hendricks v. Gonzalez*, 67 Id. 351; *United States v. Pena*, 69 Id. 983; *United States v. Hughes*, 70 Id. 972; *United States v. O'Brien*, 75 Id. 900.

A neutral government is not bound to prevent neutral ships from supplying materials to a belligerent. *The Madagascar Expedition*, 29 Am. L. Rev. 539. Forfeitures for violating the government's interdict of commercial intercourse may be enforced after hostilities have ceased. *Duvall v. United States*, 154 U. S. 548, 18 L. ed. 252; see *United States v. Hallock*, Id. 537, 17 L. ed. 568.

The purpose of § 5286 is fully set forth in the charge to the jury in *United States v. Murphy*, 84 F. R. 609. See also *United States v. O'Brien*, 75 Id. 900. One who provides the means for transporting a military expedition on any part of its journey, with knowledge of its ultimate destination and unlawful character, is punishable under § 5286. *Hart v. United States*, 84 F. R. 799.

Indications of a military operation or of a military expedition are concert and unity of action, organization of men to act together, the presence of weapons, and some form of command or leadership. *United States v. Nunez*, 82 F. R. 599. See *United States v. Ybanez*, 53 Id. 536. See further, *United States v. Hart*, 78 Id. 868, 74 Id. 724; *United States v. Wiborg*, 73 Id. 159; *United States v. Hughes*, 70 Id. 972; *United States v. Pena*, 69 Id. 983. See also cases above under § 11.

Enforce-  
ment by  
courts

SECTION 14. The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a

marine league of the coasts or shores thereof. In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or any other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this chapter; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to enforce the execution of the prohibitions and penalties of this chapter, and the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territory or jurisdiction of the United States against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

**Enforce-  
ment by  
courts**

This section is the same as U. S. Rev. Sts. § 5287 with the addition of 18 St. 320. See 17 A. G. Op. 243; *Stoughton v. Dimick*, 3 Blatch. 356, 29 Vt. 535, 23 Fed. Cas. 177.

**SECTION 15.** It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States.

**Compelling  
foreign  
vessels to  
depart**

This section is practically identical with U. S. Rev. Sts. § 5288.

Bond from  
armed ves-  
sels on  
clearing

SECTION 16. The owners or consignees of every armed vessel sailing out of the ports of, or under the jurisdiction of, the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

This section is identical with U. S. Rev. Sts. § 5289, except that in the second line the words “or under the jurisdiction thereof” are inserted. *United States v. Quincy*, 6 Pet. 445, 8 L. ed. 458; *United States v. Quitman*, 2 Am. L. Reg. 645, 27 Fed. Cas. 680.

Detention  
by collect-  
ors of  
customs

SECTION 17. The several collectors of the customs, shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, or any place subject to the jurisdiction thereof, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section.

This section is identical with U. S. Rev. Sts. § 5290, except that the words “or any place subject to the jurisdiction thereof” are inserted. It is not enough to justify a collector of customs in refusing clearance to a vessel and her cargo, under Rev. Sts. § 5290, that it is the purpose of her intended voyage to transport arms and munitions of war for the use of an insurrectionary party in a country with which the United States are at peace. *Hendricks v. Gonzalez*, 67 F. R. 351.

SECTION 18. The provisions of this chapter shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States.

Construc-  
tion of this  
chapter

This section is practically identical with U. S. Rev. Sts. § 5291.

## CHAPTER THREE

OFFENSES AGAINST THE ELECTIVE FRANCHISE AND  
CIVIL RIGHTS OF CITIZENS

| SECTION   | SECTION   |
|---|---|
| 19. Conspiracy to injure, etc., persons in the exercise of civil rights | officers, etc., of Army or Navy   |
| 20. Depriving citizens of civil rights under color of State laws        | 24. Officers of Army or Navy prescribing qualifications of voters               |
| 21. Conspiring to prevent officer from performing duties                | 25. Officers, etc., of Army or Navy interfering with officers of election, etc. |
| 22. Unlawful presence of troops at elections                            | 26. Persons disqualified from holding office; when soldiers, etc., may vote     |
| 23. Intimidation of voters by   |   |

**Conspiracy to injure, etc., persons in the exercise of civil rights**

SECTION 19. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

This section is the same as U. S. Rev. Sts. § 5508. The United States court has no jurisdiction under the Thirteenth Amendment or §§ 1978, 1979, 5508, 5510, Revised Statutes, of a charge of conspiracy made and carried out in a State to prevent citizens of African descent, because of their race and color, from making or carrying out contracts and agreements to labor. *Hodges v. United States*, 203 U. S. 1, 51 L. ed. 65. See *United States v. Powell*, 212 Id. 564, 53 L. ed. 653, 151 F. R. 648; *Ex parte Riggins*, 134 Id. 404. This

statute is constitutional. *Motes v. United States*, 178 U. S. 458, 44 L. ed. 1150; *Ex parte Yarbrough*, 110 Id. 651, 28 L. ed. 274; *United States v. Waddell*, 5 McCrary, 155, 16 F. R. 221, 112 U. S. 76, 28 L. ed. 673. The exercise by a citizen of the United States of the right to make a home-stead entry upon unoccupied public lands, which is conferred by Rev. Sts. § 2289, is the exercise of a right secured by the Constitution and laws of the United States within the meaning of this section. *United States v. Waddell, supra*. As to whether the offenses defined in this section should be prosecuted by information or indictment, *quære*, Id. That they should be prosecuted by indictment, see *United States v. Butler*, 4 Hughes, 512, 25 Fed. Cas. 226. The right to vote for members of the Congress of the United States is not derived merely from the Constitution and laws of the State in which they are chosen, but has its foundation in the Constitution of the United States. *Wiley v. Sinkler*, 179 U. S. 58, 45 L. ed. 84; *Ex parte Yarbrough, supra*.

Conspiracy  
to injure,  
etc., persons  
in the exer-  
cise of civil  
rights

It is the right of every private citizen of the United States to inform a marshal of the United States, or his deputy, of a violation of the internal revenue laws of the United States; this right is secured to the citizen by the Constitution of the United States; and a conspiracy to injure, oppress, threaten, or intimidate him in the free exercise or enjoyment of this right, or because of his having exercised it, is punishable under this section. *In re Quarles*, 158 U. S. 532, 39 L. ed. 1080. A citizen of the United States, in the custody of a United States marshal under a lawful commitment to answer for an offense against the United States, has the right to be protected by the United States against lawless violence; this right is a right secured to him by the Constitution and laws of the United States; and a conspiracy to injure or oppress him in its free exercise or enjoyment is punishable under this section. *Logan v. United States*,

**Conspiracy to injure, etc., persons in the exercise of civil rights**

144 U. S. 263, 36 L. ed. 429, 45 F. R. 872. "There can be no doubt that section 5508 is an exercise of the legislative function warranted by section 2 of the thirteenth amendment. It was enacted in view of that amendment and the right undertaken to be protected by it is undoubtedly a right secured by the amendment." *Smith v. United States*, 157 F. R. 721, 724. A conspiracy to deprive any citizen of such right is indictable under this section. *Id.* And it is not necessary to aver any overt act, and any averment in such an indictment of acts done must necessarily be referred to the charge of conspiracy as describing or particularizing such charge. *Id.* An indictment which charges the accused in the language of this section and which by way of further particularizing avers that such right was the right to the free exercise and enjoyment of freedom from involuntary servitude and slavery, and that the conspiracy was to be effected by arresting, imprisoning, guarding, and compelling him by threats and intimidation to work and labor against his will for the defendants, sufficiently describes the offense, and need not exclude the defendants from the operation of the exception in the thirteenth constitutional amendment by an averment that such person was not held in servitude as a punishment for crime. *Id.*

Federal courts have no jurisdiction to punish a conspiracy to oppress and intimidate a citizen of the United States to prevent him from exercising the right to establish a miners' union in a state, in the furtherance of which defendants were alleged to have assaulted such citizen, with intent to murder him by shooting at him with a pistol; such offense being entirely within the jurisdiction of the State courts. *United States v. Moore*, 129 F. R. 630; *United States v. Eberhart*, 127 *Id.* 254. As to an indictment held to be bad as indefinite, see *McKenna v. United States*, *Id.* 88. See also as to form of indictment *Davis v. United States*, 107 F. R. 753; *United States v. Davis*, 103 *Id.* 457; *Haynes v. United States*, 101 *Id.*

817. It was held in *United States v. Morris*, 125 Id. 322, that a conspiracy between two or more persons to prevent negro citizens from exercising the right to lease and cultivate land, because they are negroes, is a conspiracy within the meaning of this section. See *Peonage Cases*, 123 F. R. 671. This section will not sustain an indictment for conspiracy to prevent a citizen from voting at a purely state or municipal election because of his race or color. *Karem v. United States*, 121 F. R. 250.

Conspiracy to injure, etc., persons in the exercise of civil rights

The word "citizen" is here used in its political sense, with the same meaning which it has in the Fourteenth Amendment to the Constitution, and not as being synonymous with "resident," "inhabitant," or "person." *Baldwin v. Frank*, 120 U. S. 678, 30 L. ed. 766. To constitute the offense, the wrong must be done to one who is a citizen in that sense. Though the word "citizen" does not occur in the second clause of the section, there is nothing to indicate that any other than a citizen was meant. *Id.*

See further on this section *United States v. Mason*, 213 U. S. 115, 53 L. ed. 725; *Rakes v. United States*, 212 Id. 55, 53 L. ed. 401; *Riggins v. United States*, 199 Id. 547, 50 L. ed. 303; *West v. Louisiana*, 194 Id. 258, 266, 48 L. ed. 965; *In re Lancaster*, 137 Id. 393, 34 L. ed. 713, 44 F. R. 885; *In re Coy*, 127 U. S. 731, 32 L. ed. 274; *Davis v. United States*, 107 F. R. 753; *Mullen v. United States*, 106 Id. 892; *Slaughter-House Cases*, 16 Wall. 36, 21 L. ed. 394, 1 Woods, 21, 15 Fed. Cas. 649; *United States v. Patterson*, 55 F. R. 605, 638; *United States v. Patrick*, 53 Id. 356, 54 Id. 338; *United States v. Sanges*, 48 Id. 78; *Re Baldwin*, 27 Id. 187, 193; *Le Grand v. United States*, 12 Id. 577, 3 Cr. L. Mag. 713; *United States v. De Grieff*, 16 Blatch. 20, 27, 25 Fed. Cas. 799; *United States v. Cruikshank*, 1 Woods, 308, 92 U. S. 542, 23 L. ed. 588; *United States v. Butler*, 1 Hughes, 457, 25 Fed. Cas. 213; *United States v. Mitchell*, 1 Hughes, 439, 26 Fed. Cas. 1283.



Depriving  
citizens of  
civil rights  
under color  
of state laws

SECTION 20. Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

This section is the same as U. S. Rev. Sts. § 5510. "This law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified. In the Revised Statutes, it is true, a very important clause, to wit, the words 'any law, statute, ordinance, regulation, or custom to the contrary notwithstanding,' which gave the declaratory section its point and effect, are omitted; but the penal part, by which the declaration is enforced, and which is really the effective part of the law, retains the reference to State laws, by making the penalty apply only to those who should subject parties to a deprivation of their rights under color of any statute, ordinance, custom, etc., of any State or Territory: thus preserving the corrective character of the legislation." *Civil Rights Cases*, 109 U. S. 3, 16, 27 L. ed. 835. See *Re Parrott*, 1 F. R. 481, 520. In a prosecution under this section for depriving a colored child of the right to attend public schools, in order to warrant a conviction, it must be made to appear that the defendant excluded such child under some color of law, statute, ordinance, regulation, or custom of the State, and because of the color of the child. And the fact that he so acted under the advice of counsel, is no defense. The recovery of damages in a civil action for depriving the child of such rights is not a bar to a prosecution therefor under this section. *United States v. Buntin*, 10 F. R. 730. It must appear that the conspiracy was against the persons

named as a class, and because they were colored. It is no defense to allege that the persons named in the indictment were accused of illegal conduct. Conduct which tends to deprive colored people of their rights to attend public schools, or of their right to have public schools of their own under the law, is prohibited by this section. *United States v. Blackburn*, 1 N. Y. Week Dig. 276. This is a penal statute and will not form the basis of a civil action for damages. *Browner v. Irvin*, 169 F. R. 964. See further, *Hodges v. United States*, 203 U. S. 2, 51 L. ed. 65; *Charge to Jury*, 8 Chic. L. N. 26, 24 Fed. Cas. 1158.

Depriving  
citizens of  
civil rights  
under color  
of state laws

SECTION 21. If two or more persons in any State, Territory, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, Territory, District, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

Conspiring  
to prevent  
officer from  
performing  
duties

This section is practically identical with U. S. Rev. Sts. § 5518. *Clune v. United States*, 159 U. S. 590, 40 L. ed. 269; *United States v. Johnson*, 26 F. R. 682.

SECTION 22. Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than five thousand dollars and imprisoned not more than five years.

Unlawful  
presence of  
troops at  
polls

This section is practically identical with U. S. Rev. Sts. § 5528.

**Intimidating voters by Army or Navy officers, etc.**

SECTION 23. Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State shall be fined not more than five thousand dollars and imprisoned not more than five years.

This section is practically identical with U. S. Rev. Sts. § 5529.

**Army or Navy officers prescribing qualifications of voters**

SECTION 24. Every officer of the Army or Navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of voters at any election in any State shall be punished as provided in the preceding section.

This section is the same as U. S. Rev. Sts. § 5530.

**Interfering with election officers by Army or Navy officers, etc.**

SECTION 25. Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section twenty-three.

This section is practically identical with U. S. Rev. Sts. § 5531.

**Additional punishment. Suffrage by officers, etc., not impaired**

SECTION 26. Every person convicted of any offense defined in the four preceding sections shall, in addition to the punishment therein prescribed, be disqualified from holding any office of honor, profit, or trust under the United States; but nothing therein shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

This section is practically identical with U. S. Rev. Sts. § 5532.

## CHAPTER FOUR

OFFENSES AGAINST THE OPERATIONS OF THE  
GOVERNMENT

## SECTION

27. Forgery of letters patent
28. Forging bids, public records, etc.
29. Forging deeds, powers of attorney, etc.
30. Having forged papers in possession
31. False acknowledgments
32. Falsely pretending to be United States officer
33. False personation of holder of public stock
34. False demand on fraudulent power of attorney
35. Making or presenting false claims
36. Embezzling arms, stores, etc.
37. Conspiracy to commit offense against the United States; all parties liable for acts of one
38. Delaying or defaulting captor or claimant, etc., of prize property
39. Bribery of United States officer
40. Unlawfully taking or using papers relating to claims
41. Persons interested not to act as agents of the Government
42. Enticing desertions from the military or naval service
43. Enticing away workmen
44. Injuries to fortifications, harbor defenses, etc.
45. Unlawfully entering upon military reservation, fort, etc.
46. Robbery or larceny of personal property of the United States
47. Embezzling, stealing, etc., public property

## SECTION

48. Receivers, etc., of stolen property
49. Timber depredations on public lands
50. Timber, etc., depredations on Indian and other reservations
51. Boxing, etc., timber on public lands for turpentine, etc.
52. Setting fire to timber on public lands
53. Failing to extinguish fires
54. Fines to be paid into school fund
55. Trespassing on Bull Run National Forest, Oregon
56. Breaking fence or gate inclosing reserved lands, or driving or permitting live stock to enter upon
57. Injuring or removing posts or monuments
58. Interrupting surveys
59. Agreement to prevent bids at sale of lands
60. Injuries to United States telegraph, etc., lines
61. Counterfeiting weather forecast
62. Interfering with employees of Bureau of Animal Industry
63. Forgery of certificate of entry
64. Concealment or destruction of invoices, etc.
65. Resisting revenue officer; rescuing or destroying seized property, etc.
66. Falsely assuming to be a revenue officer
67. Offering presents to revenue officer

SECTION

- 68. Admitting merchandise to entry for less than legal duty
- 69. Securing entry of merchandise by false samples, etc.
- 70. False certification by consular officer
- 71. Taking seized property from custody of revenue officer
- 72. Forging or altering ship's papers or custom-house documents
- 73. Forging military bounty land warrant, etc.
- 74. Forging, etc., certificate of citizenship
- 75. Engraving, etc., plate for printing, or photographing, selling, or bringing in to United States, etc., certificate of citizenship

SECTION

- 76. False personation, etc., in procuring naturalization
- 77. Using false certificate of citizenship or denying citizenship, etc.
- 78. Using false certificate, etc., as evidence of right to vote, etc.
- 79. Falsely claiming citizenship
- 80. Taking false oath in naturalization proceedings
- 81. Provisions applicable to all courts of naturalization
- 82. Shanghaiing and falsely inducing person intoxicated to go on vessel prohibited
- 83. Corporations, etc., not to contribute money for political elections, etc.
- 84. Hunting birds, or taking their eggs from breeding grounds, prohibited

Forging,  
etc., of  
letters  
patent

SECTION 27. Whoever shall falsely make, forge, counterfeit, or alter any letters patent granted or purporting to have been granted by the President of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish as genuine, any such forged, counterfeited, or falsely altered letters patent, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

This section is the same as U. S. Rev. Sts. § 5416. *United States v. Crecilius*, 34 F. R. 30. This Act abrogates and supersedes St. 1790, § 14. *United States v. Irwin*, 5 McLean, 178, 26 Fed. Cas. 544.

Forging  
bonds, bids,  
public  
records, etc.

SECTION 28. Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid, or assist in the false making, altering, forging, or counterfeiting, any bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or shall utter or publish as true, or cause to be uttered or published as true, or have in his possession with the intent to utter or publish as true, any such false, forged, altered, or counterfeited bond, bid, pro-

posals, contracts, guarantees, securities, official bonds, public records, affidavits, or other writings, for the purpose of defrauding the United States, knowing the same to be false, forged, altered, or counterfeited; or shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, the office of any officer of the United States, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for the purpose of defrauding the United States, shall be fined not more than one thousand dollars, or imprisoned not more than ten years, or both.

Forging  
bonds, bids,  
public  
records, etc.

This section is the same as U. S. Rev. Sts. § 5479, except that the words "or have in his possession with the intent to utter or publish as true" have been inserted, and the word "contract" has been three times inserted. See also § 5418. *United States v. Hall*, 131 U. S. 50, 51, 33 L. ed. 97; *United States v. Crecilius*, 34 F. R. 30; *United States v. Lehman*, 39 Id. 768, 770; *United States v. Albert*, 45 Id. 552; 19 A. G. Op. 649. This was originally enacted in consequence of the decision in *United States v. Barney*, 5 Blatch. 294, 24 Fed. Cas. 1011, where it was held that the crime of forgery denounced in the first and second clauses of St. 1823, § 1 (3 St. 771), was confined to instruments designed for the purpose of obtaining money from the United States. *United States v. Lawrence*, 13 Blatch. 211, 26 Fed. Cas. 878.

Pecuniary fraud alone is not meant. *United States v. Bunting*, 82 F. R. 883; *Curley v. United States*, 130 Id. 1; *Palmer v. Colladay*, 18 App. D. C. 426, 432; *Tyner v. United States*, 23 Id. 324, 361; *United States v. Johnson*, 26 Id. 136. The statute is aimed at forgery, not at perjury. *United States v. Wentworth*, 11 F. R. 52. This section and § 29 apply to the insertion of a false item in a blank receipt for money, used as a voucher in a disbursing officer's accounts, certified by him to be correct, with intent to defraud the United States whether or not a forgery at common law.

Forging  
bonds, bids,  
public  
records, etc.

Howgate *v.* United States, 7 App. D. C. 217. The words “*other writing*” include an owner’s oath required to be taken before making an entry of goods at the custom-house, and an import entry and an importer’s bond, notwithstanding § 69 punishes as a misdemeanor all fraudulent acts done in effecting an entry of goods. United States *v.* Lawrence, *supra*. A forged affidavit regarding a material fact erroneously received in evidence by the officers of a local land office in a claim to land within their jurisdiction, may form the basis for a conviction under this statute, and it is immaterial that extrinsic facts might make the instrument void, though genuine. Neff *v.* United States, 165 F. R. 273. Similarly this section includes a forged affidavit when it appears therefrom, or in connection with extraneous circumstances alleged in the indictment, that it may be used to defraud the government as alleged. United States *v.* Barnhart, 33 F. R. 459. On the other hand as the object of this provision is to protect the general government against the consequences resulting from the forgery, alteration or counterfeiting of documents, records or writings in some manner connected with its business as conducted by its own officers, it does not include the forgery of a note purporting to be made by an individual and made payable at a national bank. Cross *v.* North Carolina, 132 U. S. 131, 33 L. ed. 287; and see People *v.* Welch, 74 Hun, 474, 482. Forging the name of a justice of the peace on accounts is not within this section unless done with intent to defraud. Staton *v.* United States, 88 F. R. 253. Making a blank form of a certificate of residence, such as when filled out are issued to Chinese, is not within this section. United States *v.* Ah Won, 97 F. R. 494. If the instrument was incapable of defrauding the government there is no violation of this section. United States *v.* Barnhart, 33 F. R. 459; Neff *v.* United States, 165 Id. 273.

It has been held that this section is to be considered as

relating to forgery only, and not to the making or assisting to make an affidavit which is genuine in itself, but containing statements which are false and untrue, for the purpose of defrauding the government. Hence an indictment which charges a person with aiding and assisting another in making certain affidavits which contain matter false and untrue with intent to defraud the United States, and with transmitting to an officer of the United States an affidavit in writing which contained statements known by him to be false and fraudulent, cannot be sustained as an indictment hereunder. And it is too indefinite if it is intended to charge that the affidavit was transmitted or presented to any officer of the United States in support of, or in relation to, any account or claim to be sustained under § 29. *United States v. Cameron*, 13 N. W. Rep. (Dak.) 561, 3 Smith, 132. An indictment, under this section, for transmitting to the Commissioner of Pensions a false and altered affidavit with the intent to defraud the United States must aver that it was so transmitted as a claim against the United States and allege facts showing prejudice to the United States. *United States v. Van Leuven*, 62 F. R. 69, 71. Unless it appears on the face of a homestead application that it had not the capacity of effecting fraud, an indictment for the forgery of such application is good on demurrer within this section, although in the application the land is not described with technical accuracy. *United States v. McKinley*, 127 F. R. 166. An indictment for the forgery of an entry of goods at the custom-house need not allege the existence of the goods. *United States v. Lawrence*, *supra*. Where intent is made a part of the offense, the indictment should allege it. The particular manner in which the act is done need not generally be alleged. *United States v. Wentworth*, *supra*. The charge in the indictment must be direct and not by inference. *United States v. Johnson*, 26 App. D. C. 136. An allegation that the crime occurred "on or about" a certain day is sufficiently

Forging  
bonds, bids,  
public  
records, etc.



**Forging  
bonds, bids,  
public  
records, etc.**

definite as to time. *United States v. McKinley*, 127 F. R. 168. In order to find one guilty hereunder of making a false payroll, the jury must be satisfied, (1) that the time and payroll was false, forged and counterfeit; (2) that the defendant sent it to the proper officer of the government; (3) that he knew its false character at the time he sent it, and that his intent was to defraud the government. If one intends what he knows the law forbids, the law infers the intent to defraud from the act. *United States v. Houghton*, 14 F. R. 544, 4 Crim. L. Mag. 243. Offenses named in this section can be prosecuted only by indictment. *United States v. Tod*, 25 F. R. 815.

**Forging  
deeds, pow-  
ers of at-  
torney, etc.**

SECTION 29. Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting, any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any of their officers or agents, any sum of money; or whoever shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or whoever shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, any office or officer of the Government of the United States, any deed, power of attorney, order, certificate, receipt, contract, or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall be fined not more than one thousand dollars and imprisoned not more than ten years.

This section is the same as U. S. Rev. Sts. § 5421, except that "contract" has been three times inserted and a change made in the punishment. See the notes to § 28. *United States v. Albert*, 45 F. R. 552; *United States v. Kessel*, 62

Id. 59; *United States v. Hansee*, 79 Id. 303; *Staton v. United States*, 88 Id. 253; *De Lemos v. United States*, 91 Id. 497; *United States v. Fout*, 123 Id. 625. The ingredients of this offense should be set forth with such particularity that the court and defendant may know from the indictment whether the defendant is to be tried for transmitting an affidavit not genuine in its execution, or one genuine in its execution but false in statement, and if the latter, whether in a material or immaterial part. *United States v. Corbin*, 11 F. R. 238. The third clause of this section includes an affidavit sworn to by an actual person, but false in the facts it professes to narrate, as well as an affidavit forged or counterfeited, if the defendant knew that it was false. *United States v. Staats*, 8 How. 41; *United States v. Spaulding*, 13 N. W. Rep. 357, 3 Smith (Dak.), 85. This section applies only to instruments altered or forged for the purpose of obtaining moneys from the United States or their officers or agents. *United States v. Reese*, 4 Sawyer, 629, 27 Fed. Cas. 746. Hence it does not apply to a false and fraudulent bond relating to the exportation of distilled spirits. *United States v. Barney*, 5 Blatch. 294, 24 Fed. Cas. 1011. The word "claim" is not limited to a demand for money, and an indictment will be supported for the transmission to the Pension Office of forged papers in support of a claim for bounty land under an Act of Congress (*United States v. Wilcox*, 4 Blatch. 385); or for the transmission of false affidavits or declarations in support of an application for bounty land-warrants. *United States v. Bickford*, 4 Blatch. 337, 24 Fed. Cas. 1144. A pre-emption claim is also such an act or claim as is within the meaning of this section. *United States v. Spaulding*, *supra*. See dissenting opinion, 13 N. W. Rep. 538. It is sufficient to aver that the act was done with intent to defraud the government without alleging that it was done feloniously or with a felonious intent. *United States v. Staats*, *supra*. It need not be alleged that the forged papers which

Forging  
deeds, pow-  
ers of at-  
torney, etc.

Forging  
deeds, pow-  
ers of at-  
torney, etc.

were transmitted stated all the facts required to be established to entitle the party to the claim, if it shows that they were transmitted for the purpose of obtaining its allowance. *United States v. Wilcox, supra.* It is unnecessary to show that the prisoner actually transmitted the papers. Any party participating or co-operating in the crime by aiding or assisting is liable. *United States v. Bickford, supra.* It is unnecessary that the claim should be one in favor of the person who presents the false writing in support of it. *United States v. Kohnstamm, 5 Blatch. 222, 26 Fed. Cas. 813.* The repealing clause of St. March 2, 1863 (12 St. 699), saves prosecutions for offenses committed hereunder prior to the passage of the Act of 1863. *Id.* The first part of this section is a forgery and not a perjury statute. *United States v. Moore, 60 F. R. 738.* The section really enumerates three offenses, viz.: (1) The false making, altering, forging, or counterfeiting of an instrument; (2) uttering or publishing the same as true, with intent to defraud the United States; (3) transmitting or presenting the same to an officer of the government with intent to defraud the United States, knowing the same to be false. *United States v. Hartman, 65 F. R. 490.* The affidavit must be knowingly false and not merely reckless. *United States v. Moore, 2 Low. 232.* "Making" a false affidavit in a pension matter is within this section but causing one to be made is within Rev. Sts. § 4746. *United States v. Kuentsler, 74 F. R. 220.* Forgery of an affidavit by a pensioner to be used in contesting his deserted wife's claim for one-half his pension is not within this section. *United States v. Swan, 131 F. R. 140.* The same is true of a false certificate by a notary public. *United States v. Glasener, 81 F. R. 566.*

Having  
false, etc.,  
papers in  
possession

SECTION 30. Whoever, knowingly and with intent to defraud the United States, shall have in his possession any false, altered, forged, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, for

the purpose of enabling another to obtain from the United States, or from any officer or agent thereof, any sum of money, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both.

**Having  
false, etc.,  
papers in  
possession**

This section is identical with U. S. Rev. Sts. § 5422, except that "contract" has been added and a change made in punishment.

SECTION 31. Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, shall knowingly make any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter, submitted to, made with, or taken on behalf of, the United States, and concerning which an oath or affirmation is required by law or regulation made in pursuance of law, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

**Officer  
making  
false  
acknowl-  
edgments**

This section is new.

SECTION 32. Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any Department or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any Department, or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

**Falsely  
pretending  
to be  
United  
States  
officer**

This section is the same as Act of April 18, 1884, c. 26 (23 St. 11). See U. S. Rev. Sts. § 5448.

This section includes two separate offenses: the first is falsely impersonating an officer or employee of the United

**Falsely  
pretending  
to be  
United  
States  
officer**

States and acting as such with intent to defraud; the second is falsely impersonating an officer or employee of the United States and in the assumed character demanding or obtaining some valuable thing with intent to defraud. *United States v. Taylor*, 108 F. R. 621. In order to convict under the second part of this section the jury must find that the defendant assumed to be the officer named in the indictment, that the assumption was false, that it was made with the intent to defraud and that an attempt was made to defraud. *United States v. Curtain*, 43 F. R. 433. The false pretense must be made to the party intended to be defrauded. *United States v. Bradford*, 53 F. R. 542. It is not necessary that the defendant should both "demand" and "obtain." Obtaining credit for a month's lodging is obtaining a "valuable thing." *United States v. Ballard*, 118 F. R. 757. As to what evidence is necessary to convict, see *United States v. Farnham*, 127 F. R. 478. An indictment is sufficient if it follows the language of the statute. *United States v. Ballard, supra*; *United States v. Brown*, 119 F. R. 482.

**False per-  
sonation of  
holder of  
public  
stocks, pen-  
sioner, etc.**

SECTION 33. Whoever shall falsely personate any true and lawful holder of any share or sum in the public stocks or debt of the United States, or any person entitled to any annuity, dividend, pension, prize money, wages, or other debt due from the United States, and, under color of such false personation, shall transfer or endeavor to transfer such public stock or any part thereof, or shall receive or endeavor to receive the money of such true and lawful holder thereof, or the money of any person really entitled to receive such annuity, dividend, pension, prize money, wages, or other debt, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

This section is the same as U. S. Rev. Sts. § 5435.

**False de-  
mand on  
fraudulent  
power of  
attorney**

SECTION 34. Whoever shall knowingly or fraudulently demand or endeavor to obtain any share or sum in the public stocks of the United States, or to have any part thereof transferred, assigned, sold, or conveyed, or to have any annuity, dividend, pension, prize money, wages, or other debt due from

the United States, or any part thereof, received, or paid by virtue of any false, forged, or counterfeited power of attorney, authority or instrument, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

**False demand on fraudulent power of attorney**

This section is the same as U. S. Rev. Sts. § 5436.

**SECTION 35.** Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; or whoever, having charge, possession, custody, or control of any money or other public property used or to to [sic] be used in the military or naval service, with intent to defraud the United States or wilfully to conceal such money or other property, shall deliver or cause to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. And whoever shall knowingly purchase or receive in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service, any arms, equipments, ammunition, clothes, military stores, or other public property, whether furnished to the soldier, sailor, officer, or person, under a clothing allowance or otherwise, such soldier, sailor, officer,

**Presenting false claims**

**Presenting false claims** or other person not having the lawful right to pledge or sell the same, shall be fined not more than five hundred dollars and imprisoned not more than two years.

This section is the same as U. S. Rev. Sts. § 5438, except a change in punishment, and the addition of the words "whether furnished to the soldier, sailor, officer, or person under a clothing allowance or otherwise." See Act of May 30, 1908, c. 235 (35 St. 555). *United States v. Perrin*, 131 U. S. 55, 56, 33 L. ed. 88; *In re Luis Oteiza y Cortes*, 136 Id. 330, 333, 34 L. ed. 464, 42 F. R. 47; *Ingraham v. United States*, 155 U. S. 434, 437, 39 L. ed. 213, 49 F. R. 155; *Carter v. McClaughry*, 183 U. S. 365, 392, 46 L. ed. 236; *United States v. Frisbie*, 28 F. R. 808; *United States v. Wallace*, 40 Id. 144, 46 Id. 569; *United States v. Strobach*, 48 Id. 902; *United States v. Patterson*, 55 Id. 605, 639; *Rhodes v. United States*, 79 Id. 740; *Greene v. United States*, 154 Id. 401, 18 A. G. Op. 72. The object of this statute is to protect the government against fraudulent claims presented to its officers for settlement, and it was never designed to apply to the prosecution of claims before a tribunal like the Court of Claims. *United States v. Moore*, 3 MacArthur, 226. The offenses herein named were formerly not felonies, and one indicted therefor is not entitled to challenge more than three jurors. *United States v. Daubner*, 17 F. R. 793. The opening words of this section as it was in Rev. Sts. § 5438 were, "Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval." In the original Act (12 St. 696, 698), from which this was taken, a semicolon followed the word "made" in the clause quoted, instead of the comma as at present, and there was no comma after the word "presented." The changes in punctuation have altered the meaning of the section, and the words "for payment or approval" are a part of both the first and second clauses of it. *United States v. Ambrose*, 2 F. R. 764.

By making a claim, as defined in this section, is meant the asking or demanding, on the part of the claimant, payment for services. "False" means unfounded or unjust; "fictitious" means not real; "fraudulent" means having a certain and clear perception of the falsity of the claim made. *United States v. Bittinger*, 21 Int. Rev. Rec. 342, 24 Fed. Cas. 1150. In order to sustain a conviction for making or using a false affidavit, it must be made to appear not only that it was false, but also that the claim, the payment of which was sought thereby, was false, fictitious, or fraudulent. *United States v. Miskell*, 15 F. R. 369. The indictment should allege that the officer to whom the claim was presented was authorized to approve and allow it. *United States v. Reichert*, 12 Sawyer, 643, 32 F. R. 142. A United States marshal is an officer to whom it is an offense for a deputy marshal to present for approval a false claim for fees. *United States v. Strobach*, 4 Woods, 592. And so is the United States district judge. *Id.* So is the superintendent of the Military Academy at West Point. *United States v. Franklin*, 174 F. R. 161. It is sufficient to aver that the claim was presented to a designated officer without naming the person who filled the office. The different items of the account may be embraced in one count of the indictment. It must be alleged that the claim was made for payment or approval, and it is not enough to say that the defendant did merely make an unlawful claim knowing it to be false. *United States v. Ambrose, supra.* An allegation that the claim was presented to T., then late marshal, he being then and there an officer in the civil service, is accurate and sufficient. An averment that the claim so presented was for services purporting to have been performed by a deputy marshal, in a case in which the government was plaintiff, and that it was a claim in favor of the late marshal against the United States, shows that such marshal was the proper officer to whom the claim should be pre-

Presenting  
false claims



**Presenting false claims** sented for approval. *United States v. Strobach, supra.* If it is averred with requisite certainty that the defendant presented for approval to an officer in the civil service of the United States, with intent to defraud, a false, fictitious, and fraudulent claim against the government, knowing the same to be such, every element of the offense created by this section is covered and the averment is sufficient. *Id.* An indictment charging the defendant with making a false deposition, to enable another person to procure payment of a fraudulent pension claim, need not aver that such deposition was ever used, or that an attempt was made to use it, or that the claim had been presented and was pending when the deposition was made. *United States v. Rhodes*, 30 F. R. 431.

It is an offense within this section to present a false claim as a pensioner and to demand money as such. *United States v. Goggin*, 9 Biss. 416, 3 F. R. 492. And the presentation to the pension agent of a genuine certificate of pension, which has been obtained by the fraud of the pensioner, is in itself the presentation of a false and fraudulent claim against the government within this section. *Id.* The fact that punishment for the fraud in obtaining the certificate is barred by the statute of limitations will not operate as a defense for the presentation of such certificate. *Id.* This section is wider in its scope than Rev. Sts. § 4746 and is not limited by that section. *Edginton v. United States*, 164 U. S. 361, 41 L. ed. 467. The "use" of a false pension voucher is an offense against this section and not against § 4746 as amended by the Act of July 7, 1898, c. 578 (30 St. 718). *Pooler v. United States*, 127 F. R. 509. See also *United States v. Adler*, 49 Id. 733. But see 9 Crim. L. Mag. 707, where it is said that it seems that the government cannot prosecute for the offense of making or presenting false affidavits in pension claims under this section, but must do so under Rev. Sts. § 4746. This section is intended to

apply to a case where a person makes or causes to be made a false statement of this character, or where he obtains or is guilty of aiding to obtain the payment or approval of any such false claim. It is clearly implied that the statute is intended to cover a case where an attorney, agent, officer, or other person undertakes to get a claim which is false and fraudulent allowed in his own behalf or in behalf of any other party. *United States v. Hull*, 14 F. R. 324. An allegation that the defendant made and caused to be made a false voucher, certificate, or claim, and that he presented and caused to be presented, &c., is not bad for duplicity because the statute uses "or" instead of "and." *Id.* The statute distinguishes between making and presenting a fraudulent bill or account, and makes each a distinct offense. Where a United States marshal for a designated district makes a false and fraudulent bill for services or expenses, and, after securing its approval by the court, forwards it to the proper department at Washington for payment, or otherwise causes it to be presented there for such purpose, he makes, in such district, a false and fraudulent bill. *Ex parte Shaffenburg*, 4 Dillon, 271, 21 Fed. Cas. 1144. It is an offense under this section to substantiate a claim, which the defendant believes to be just, by affidavits and depositions which he knows are false. *United States v. Jones*, 32 F. R. 482. But it is not an offense to make a claim upon the government for the payment of a demand that is groundless or without merit, unless the person who makes it understands at the time it is made that it is false, fictitious, or fraudulent; and therefore intends to defraud the government. One who makes a claim on the government for pay and bounty as the widow of a soldier, knowing that she is not his widow, is within this section. *United States v. Route*, 33 F. R. 246. Inmates of the national military homes are not in the military service, and clothing issued to them is not used in such service. *United States v. Murphy*, 9 F. R. 26; *United States v. Griswold*,

Presenting  
false claims

**Presenting false claims** 12 Sawyer, 398, 30 F. R. 604; *United States v. Griswold*, 12 Sawyer, 352, 30 F. R. 762; *United States v. Griswold*, 11 Sawyer, 65, 24 F. R. 361; see § 3490; *United States v. Griswold*, 11 F. R. 807; *United States v. Wright*, 2 Cranch C. C. 296, 28 Fed. Cas. 790.

This section is limited by § 37. *United States v. Reichert*, 32 F. R. 142. See *United States v. Newton*, 48 Id. 218; *United States v. Van Leuven*, 62 Id. 62. It applies to a fraudulent claim made in the court of private land claims. *In re Peraltaareavis*, 8 New Mex. 27, 41 Pac. Rep. 538, and to accounts and vouchers presented by the Indian agents to the Commissioner of Indian Affairs. *Bridge-man v. United States*, 140 F. R. 577. An indictment charging both "making" and "presenting" is not bad for duplicity. *Id.* *United States v. Franklin*, 174 F. R. 161. A slight variation between the date alleged in the indictment and the date of the vouchers is not ground for acquittal. *Id.* It is not essential that the voucher or other thing should in itself contain false matter, but whether the claim is honest or fraudulent is to be determined from all the facts. *Dimmick v. United States*, 116 F. R. 825. A fraudulent affidavit to procure a soldier's additional homestead under Rev. Sts. § 2306 is false evidence to support a claim against the United States. *United States v. Lair*, 118 F. R. 98. An indictment under this section must state facts showing the fraudulent character of the claim. *United States v. Greene*, 115 F. R. 343. As to what facts are sufficient, see *United States v. Franklin*, 174 F. R. 161. An account must be "knowingly" false. *United States v. Russell*, 19 F. R. 591. As to recovery of property obtained by fraud, see *Lalone v. United States*, 164 U. S. 255, 41 L. ed. 425. In the last sentence of this section knowledge is a necessary element. *United States v. Smith*, 156 F. R. 859, but this applies only to the fact that the seller or pledgor is a soldier, etc. *United States v. Koplik*, 155 F. R. 919.

Possession by a civilian of military goods is *prima facie* evidence that he received them by sale or pledge. **Presenting false claims** *United States v. Smith, supra.* Before the words "whether furnished to the soldier . . . under a clothing allowance or otherwise" were added to the statute there was a conflict of opinion whether it applied to clothing so furnished. See *United States v. Hart*, 146 F. R. 202; *United States v. Michael*, 153 Id. 609; *United States v. Koplik, supra.*

SECTION 36. Whoever shall steal, embezzle, or knowingly apply to his own use, or unlawfully sell, convey, or dispose of, any ordnance, arms, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in the preceding section. **Embezzling arms, stores, etc.**

This section is the same as U. S. Rev. Sts. § 5439. See 18 St. 479, c. 144, § 1. As to embezzlement by a paymaster's clerk in the navy, see *United States v. Bogart*, 3 Ben. 257, 24 Fed. Cas. 1184; *United States v. Murphy*, 9 F. R. 26, note, § 35.

SECTION 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both. **Conspiring to commit offense against United States**

This section is the same as the Act of May 17, 1879, c. 8 (21 St. 4). See also U. S. Rev. Sts. § 5440. *United States v. Chouteau*, 102 U. S. 603, 26 L. ed. 246; *United States v. Britton*, 108 Id. 192, 199, 27 L. ed. 701; *In re Coy*, 31 F. R. 794, 127 U. S. 731, 749, 32 L. ed. 274; *United States v. Perrin*, 131 U. S. 55, 56, 33 L. ed. 88; *United States v. Barber*, 140 Id. 177, 178, 35 L. ed. 398; *France v. United States*, 164 Id. 676, 41 L. ed. 595; *Crossley v. California*, 168 Id. 641, 42 L. ed. 610; *Barrett v. United States*, 169 Id. 218, 231, 42 L. ed. 723; *Hamilton v. Rathbone*, 175

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Id. 414, 419, 44 L. ed. 219; Lottery Case, 188 Id. 321, 47 L. ed. 492; Francis *v.* United States, Id. 375, 47 L. ed. 508; United States *v.* Hammond, 2 Woods, 197, 26 Fed. Cas. 99; *In re* Calicott, 8 Int. Rev. Rec. 169, 4 Fed. Cas. 1052, 1075, 1 Am. L. Times (U. S. Courts) 129; United States *v.* Goldberg, 7 Biss. 175, 25 Fed. Cas. 1342; The Mussel Slough Case, 5 F. R. 680; United States *v.* Frisbie, 28 Id. 808; United States *v.* Thompson, 31 Id. 331, 334; United States *v.* Johannesen, 35 Id. 411; United States *v.* Smith, 40 Id. 755, 758; United States *v.* Gardner, 42 Id. 829; United States *v.* Stevens, 44 Id. 132; United States *v.* Shapleigh, 54 Id. 126, 133; United States *v.* Patterson, 55 Id. 605, 640; Thomas *v.* Cincinnati, etc. Ry. Co., 62. Id. 803; *In re* Grand Jury, Id. 840; *In re* Charge to Grand Jury, Id. 828; United States *v.* Debs, 63 Id. 436; United States *v.* Barrett, 65 Id. 62; Gantt *v.* United States, 108 Id. 61; Wright *v.* United States, Id. 805; United States *v.* Marx, 122 Id. 964; *In re* Runkle, 125 Id. 996; United States *v.* Radford, 131 Id. 378; *Ex parte* Peeke, 144 Id. 1016; United States *v.* Peeke, 153 Id. 166, 168; Rabens *v.* United States, 146 Id. 978; Greene *v.* United States, 154 Id. 401; United States *v.* Greene, 146 Id. 803, 113 Id. 683; Palmer *v.* Colladay, 18 App. D. C. 426; Lorenz *v.* United States, 24 Id. 337; Benson *v.* Palmer, 31 Id. 561; 21 A. G. Op. 400; United States *v.* Carpenter, 6 Dak. 294. This section as Rev. Sts. § 5440 was amended by St. May 17, 1879, c. 8 (21 St. 4), so as, after the word "penalty" in the fifth line, to read — "of not more than \$10,000, or to imprisonment for not more than two years, or to both fine and imprisonment, in the discretion of the court." This section embraces two separate offenses (1) conspiracy to commit an offense against the United States; (2) conspiracy to defraud the United States in any manner. United States *v.* Benson, 70 F. R. 591; see United States *v.* Van Leuven, 62 Id. 62, 68.

This section covers every conspiracy to commit an act made an offense or crime by any law of the United States, as well as an act that may defraud the United States in any manner, and is not limited in its application to conspiracies to defraud the revenue. *United States v. Owen*, 32 F. R. 534. It applies to the prosecution of a false, feigned, and fraudulent claim by false and perjured testimony before the Court of Claims (*United States v. Dennee*, 3 Woods, 47); to the offense described in § 201 (*United States v. Stevens*, 2 Haskell, 164, 27 Fed. Cas. 1312), and in Rev. Sts. § 5132 (*United States v. Swett*, 2 Haskell, 310); and to conspiracies that affect private rights, or interests which are protected by the criminal laws of the United States, as, *e. g.*, a conspiracy to plunder a vessel within the admiralty and maritime jurisdiction of the United States. *United States v. Sanche*, 7 F. R. 715. It applies to obstruction of the administration of justice in the Federal courts contrary to § 135 (*Wilder v. United States*, 143 F. R. 433); to violation of Rev. Sts. § 5209 (*Scott v. United States*, 130 F. R. 429); to conspiracy between bank official and outsider to certify checks contrary to Rev. Sts. § 5208 (*Chadwick v. United States*, 141 F. R. 225); to violation of Rev. Sts. § 4746 (*United States v. Adler*, 49 F. R. 736); to violation of § 64 (*United States v. De Grieff*, 16 Blatch. 20, 25 Fed. Cas. 799); to violation of § 215 (*Marrin v. United States*, 167 F. R. 951, 159 Id. 767); to violation of Hepburn Act of June 29, 1906, c. 3591, § 1 (34 St. 584) (*United States v. Clark*, 164 F. R. 75); to assistance of contract laborers into the United States contrary to Immigration Act of Feb. 20, 1907, c. 1134, § 4 (34 Stat. 898) (*United States v. Stevenson*, 215 U. S. 200; *United States v. Tsokas*, 163 F. R. 129); to conspiracy to defraud the United States by sending old newspapers at the time of weighing the mails under Rev. Sts. § 4002 (*United States v. Newton*, 48 F. R. 218); to violation of Rev. Sts. § 3296 (*Scott v. United States*, 165 F. R. 172); to conspiracy

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to avoid payment on dutiable articles (*Marrash v. United States*, 168 F. R. 225). It applies also to § 35, and inasmuch as under this section the conspiracy to defraud must be followed by some act to effect that object, to constitute a public offense, it would seem that, to the extent in which the offense differs in that particular from the offense of defrauding the United States mentioned in § 35, this section must be held to qualify and amend it. *United States v. Reichert*, 12 Sawyer, 643, 32 F. R. 142. See also *United States v. Hirsch*, 100 U. S. 33, 25 L. ed. 539; *United States v. Thompson*, 12 Sawyer, 151, 29 F. R. 86. Pecuniary fraud alone is not meant: *Hyde v. Shine*, 199 U. S. 62, 50 L. ed. 90; *United States v. Bradford*, 148 F. R. 413; *McGregor v. United States*, 134 Id. 187; *Curley v. United States*, 130 Id. 1, 122 Id. 738; *United States v. Bunting*, 82 Id. 883; *Tyner v. United States*, 23 App. D. C. 324; nor is the offense confined to a violation of a criminal statute: *United States v. Stone*, 135 F. R. 392; for offenses at common law in the District of Columbia are included. *Tyner v. United States, supra*. The section applies to conspiracy to defraud by giving straw bail and it was held immaterial whether the accused appeared on the day required. *Radford v. United States*, 129 F. R. 49. A conspiracy with a government employee to furnish advance information of crop conditions and then issue false reports to the public is within this section. *United States v. Haas*, 163 F. R. 908; *Haas v. Henkel*, 166 Id. 621. A conspiracy merely to obtain advance information was formerly not enough. *Id.*; *United States v. Haas*, 167 F. R. 211. But see § 123. This section applies to an agreement, the object of which is to deprive the Federal government of the services of those entrusted with the discharge of its necessary duties. *Crawford v. United States*, 212 U. S. 183, 53 L. ed. 465, 30 App. D. C. 1. It also applies to a combination of persons to interfere with the transportation of the mails: 21 A. G. Op. 8; to combinations to defeat the inter-

state commerce law: *Toledo, etc. Ry. Co. v. Penn. Co.*, 54 F. R. 730; *Waterhouse v. Comer*, 55 Id. 149; *United States v. Howell*, 56 Id. 21; but as giving and receiving rebates (made criminal by the interstate commerce act) requires two parties to carry it out, a rebate agreement by the parties is a violation of that Act and not conspiracy under this section. *United States v. New York Cent. etc. R. Co.*, 146 F. R. 298.

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Conspiracy to conceal property of a bankrupt from his trustee is within this section. *United States v. Cohn*, 142 F. R. 983. But in that case the indictment need not be brought within one year. *United States v. Comstock*, 162 F. R. 416. Where the property was concealed prior to the bankruptcy an indictment is bad where there is no allegation that it was done in contemplation of bankruptcy or that there was some overt act after the bankruptcy. *United States v. Grodson*, 164 F. R. 157; but the action may be maintained where it is alleged that the concealment continued after the bankruptcy and the property was not scheduled by the bankrupt. *Cohen v. United States*, 157 F. R. 651. There is no conspiracy where the trustee is one of the alleged conspirators. *Johnson v. United States*, 158 F. R. 69. The indictment is defective where it fails to allege that the concealment was done knowingly and fraudulently or their equivalents. *United States v. Comstock*, 162 F. R. 415.

It is not a violation of this section for a lawful entryman after his application to agree to sell his claim to another: *United States v. Biggs*, 211 U. S. 507, 53 L. ed. 305; *United States v. Sullenberger*, Id. 522, 53 L. ed. 311; *Williamson v. United States*, 207 Id. 425, 52 L. ed. 278; and an action cannot be maintained where it is not alleged that the purchaser employed the entryman or that the entries were in fact fraudulent. *Pereles v. Weil*, 157 F. R. 419. Where, however, the entryman acts as agent for a disqualified person or the latter furnishes the money there is such violation. *United States v. Keitel*, 211 U. S. 370, 53 L. ed. 230, revers-



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ing 157 F. R. 396; *United States v. Herr*, 211 U. S. 404, 53 L. ed. 251; *Arnold v. Weil*, 157 F. R. 429; *United States v. Robbins*, Id. 999. See also *Nickell v. United States*, 167 F. R. 741. This section covers a conspiracy to obtain public lands by false proofs: *Jones v. United States*, 162 F. R. 417; to obtain public lands by false entries though there is no intention of carrying the preliminary entries to final patent: *Stearns v. United States*, 152 F. R. 900; to dispose of public lands in a manner not authorized by statute. *United States v. Lonabaugh*, 158 F. R. 314. A combination to exchange lands held by defendants, the equitable title to which was in a state, for public lands of the United States, has been held within this section. *United States v. Hyde*, 132 F. R. 545; see also *Perrin v. United States*, 169 Id. 17; but see *In re Benson*, 131 Id. 968. An agreement between a member of Congress and another, the one to receive and the other to pay a bribe for procuring an office is not within this section: *United States v. Dietrich*, 126 F. R. 664; neither is a conspiracy to defraud an individual. *United States v. Clark*, 121 F. R. 190.

There is a conspiracy when two or more persons mutually agree to do an unlawful act, or to do a lawful act in an unlawful manner, and the offense is complete when such agreement has been made and an act done in furtherance of it. *United States v. Wootten*, 29 F. R. 702; *United States v. Nunnemacher*, 7 Biss. 111, 27 Fed. Cas. 197; *United States v. Goldberg*, 7 Biss. 175. A mere agreement or combination to effect an unlawful object, not followed by an act on the part of conspirators to carry it into execution, does not constitute the offense. *United States v. Nunnemacher*, 7 Biss. 111, 27 Fed. Cas. 197; *United States v. Sacia*, 2 F. R. 754; *United States v. Richards*, 149 Id. 443; *United States v. Cole*, 153 Id. 801. It is unnecessary to aver that a conspiracy succeeded: *Curley v. United States*, 130 F. R. 1; *United States v. McKinley*, 126 Id. 242; *United States*

*v. Greene*, 115 Id. 343 (and see *Williamson v. United States*, 207 U. S. 425, 52 L. ed. 278) or that consummation is possible. *United States v. Stamatopoulos*, 164 F. R. 524; *United States v. Burkett*, 150 Id. 208.

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In an indictment for conspiracy to bring Chinamen into this country from Mexico by a vessel, the provisioning of the vessel and sailing from an American port to Mexico were properly averred as overt acts. *Daly v. United States*, 170 F. R. 321.

It is not an offense within this section to conspire to make a settlement on Indian lands and to return thereto after having been removed, such offense being punishable by a penalty provided for by Rev. Sts. § 2124 (*United States v. Payne*, 22 F. R. 426); nor, where the conspiracy to defraud is legally impossible of execution, as where it depends upon the future passage of an Act of Congress (*United States v. Crafton*, 4 Dillon, 145); nor where the president of a national bank and one of the directors thereof agree to purchase shares of said bank with its money and for its benefit (*United States v. Britton*, 108 U. S. 192, 27 L. ed. 703), or to misapply its money by procuring the declaration of a dividend greater than the net profits of the banking association (Id.); nor is a conspiracy to enter land under the timber culture law with the money of one, for the purpose of selling it for the advantage of him who furnishes the money. *United States v. Thompson*, *infra*. The doing of some act in pursuance of the conspiracy is an ingredient of the crime, but it is not necessary to show that such is itself of a criminal nature. *United States v. Thompson*, 12 Sawyer, 151, 29 F. R. 86; *United States v. Smith*, 2 Bond, 323. And until such act, done by some one of the conspirators in pursuance of such unlawful object, all parties to it may withdraw, and thus escape the effect of the statute. *United States v. Donau*, 11 Blatch. 168, 25 Fed. Cas. 890.

Two persons, one of whom is a bank officer, may be in-

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dicted for a conspiracy to commit an offense which under an Act of Congress could be committed by the bank officer only. *United States v. Martin*, 4 Cliff. 156. Where the act to effect the object of the conspiracy is done by only one of the parties thereto, it constitutes a complete offense as to all the others, for in that case the act of one becomes the act of all, although they never met together to devise the means or give effect to their designs. *United States v. Nunnemacher*, 7 Biss. 111, 27 Fed. Cas. 197; *United States v. Kane*, 23 F. R. 748; *United States v. Sacia*, 2 Id. 754; *United States v. Richards*, *supra*; *Crawford v. United States*, 30 App. D. C. 1, 212 U. S. 183, 53 L. ed. 465. The identity of the conspiracy is not destroyed by the subsequent connection of new parties therewith (*United States v. Nunnemacher*, *supra*); nor is it necessary to conviction that the conspiracy should have originated with the persons charged. *United States v. Sacia*, *supra*.

Upon a charge of conspiracy an overt act which is itself criminal may be proved to show the existence of the conspiracy charged. And the fact that the overt acts set out and proved were severally criminal, rendering the persons committing them liable to specific punishment therefor, does not exonerate the persons from the crime of conspiracy or bar a prosecution therefor. *United States v. Rindskopf*, 6 Biss. 259, 27 Fed. Cas. 813; *Thomas v. United States*, 156 F. R. 897, 145 Id. 74; *United States v. Rosenthal*, 126 Id. 766; *Robinson v. United States*, 172 Id. 105. The overt act must precede the consummation of the conspiracy. *Ex parte Black*, 147 F. R. 832.

Conspiracy to commit is not merged in the completed offense where the latter is a misdemeanor and the punishment is substantially the same. *United States v. Scott*, 139 F. R. 697. It is immaterial that the punishment for the conspiracy may be more severe than that for the completed offense. *Clune v. United States*, 159 U. S. 590, 595, 40 L.

ed. 269. It is unnecessary to prove intent. That is inferred from the unlawful act of combining to defraud. *United States v. Donau*, 11 Blatch. 168. Nor is it necessary that there should be evidence of any formal agreement provided the transaction indicates a preconceived purpose. *Reilley v. United States*, 106 F. R. 896; *Marrash v. United States*, 168 Id. 225. The conspiracy must be sufficiently charged and proved against all its members; there must also be some overt act by some or all of them. *Pettibone v. United States*, 148 U. S. 197, 202, 37 L. ed. 419; *Dealy v. United States*, 152 Id. 539, 38 L. ed. 545; *Bannon v. United States*, 156 Id. 464, 468, 39 L. ed. 494; *Stokes v. United States*, 157 Id. 187, 189, 39 L. ed. 667; *United States v. Cassidy*, 67 F. R. 698; *United States v. Adler*, 49 Id. 736; *United States v. Newton*, 52 Id. 275; *In re Benson*, 58 Id. 962; *United States v. Wilson*, 60 Id. 890. A co-conspirator is a competent witness against another co-conspirator upon the trial on a charge of conspiracy. *United States v. Sacia*, 2 Fed. 754.

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Indictments against the same defendant for defrauding the United States by false entries by different persons are properly consolidated under Rev. Sts. § 1024. *Olson v. United States*, 133 F. R. 849. The same is true of charges against the same defendants for violating this section and §§ 110, 112, and 113, all relating to the same transaction, *McGregor v. United States*, 134 F. R. 187, and of counts for violating § 215 and conspiring to commit such offense under this section. *United States v. Clark*, 125 F. R. 92.

An indictment under this section must charge that the conspiracy was to do some act made a crime by the laws of the United States, and it must state with such reasonable certainty the acts intended to be effected or carried out by the agreement of the parties that it can be seen that the object of the conspiracy was a crime against the United States. *In re Wolf*, 27 F. R. 606. An act done to effect the object of the con-

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spiracy is material matter, and it must be alleged and proved with the usual certainty required in criminal pleading. *United States v. Milner*, 36 F. R. 890; *United States v. Thompson*, 12 Sawyer, 151; *United States v. Watson*, 17 F. R. 145. And such omission is fatal. *United States v. Reichert*, 12 Sawyer, 643, 32 F. R. 142. The indictment need not set out the manner in which the alleged conspiracy was to be carried into effect, nor state the means agreed on to accomplish its purpose. *United States v. Dennee*, 3 Woods, 47, 25 Fed. Cas. 818; *United States v. Milner*, *supra*. See, however, *United States v. Crafton*, 4 Dillon, 145, 25 Fed. Cas. 681. It should charge the object of the conspiracy. *United States v. Milner*, *supra*. It is not necessary to set forth the county in which the conspiracy was formed, and if incorrectly set forth, it may be rejected as surplusage. *United States v. Smith*, 2 Bond, 323, 27 Fed. Cas. 1144. When a document is relied on to sustain the prosecution, it must be set out *verbatim* or in substance. A statement of the pleader's opinion as to the effect it was intended to or might produce is not enough. *United States v. Watson*, 17 F. R. 145. But an indictment for conspiring to defraud the United States by entering public lands need not set out the affidavit made in pursuance thereof. If it is referred to or described as the affidavit required by law, its words being prescribed by statute, the court will take notice of them, and so must the defendants. *United States v. Thompson*, *supra*. An indictment of one of several persons charged with conspiracy is good on demurrer without a joinder of the others. *United States v. Miller*, 3 Hughes, 553. And if two are shown to have conspired, the acquittal of others jointly indicted does not prevent the conviction of those two. *United States v. Rindskopf*, 6 Biss. 259. An officer of internal revenue, named as such in the indictment, cannot be jointly indicted with a private person for a conspiracy to defraud the revenue. *United States v. McDonald*, 3 Dillon, 543, 26 Fed. Cas. 1085.

But if a bankrupt and another person conspire together to commit an act made criminal by subds. 7, 10 of Rev. Sts. § 5132, and either one does any act in pursuance of such conspiracy, both are punishable. *United States v. Bayer*, 4 Dillon, 407, 24 Fed. Cas. 1046. It need not appear from the indictment in what manner the act described would tend to effect the object of the conspiracy. *United States v. Donau*, 11 Blatch. 168. An averment in any form that some act has been done to carry out the agreement is enough, as, *e. g.*, “furnished and loaned” a skiff to aid in the crime of robbery. *United States v. Sanche*, 7 F. R. 715. If the indictment describes the subject-matter of the conspiracy as “the taxes arising from and imposed by law upon certain divers proof gallons and quantities of distilled spirits distilled in the United States, then and there situated in certain bonded warehouses,” describing them, it is good, though the precise kinds, quantities, and qualities are not stated. The overt acts need not be laid as having been done “to effect the object.” It is enough to say that they were done in pursuance thereof. A revenue officer may be joined with others in such an indictment without charging him as an officer, although under another statute he is subject to a severer punishment than private individuals. Under such an indictment he can be punished under this section only. *United States v. Boyden*, 1 Lowell, 266, 24 Fed. Cas. 1213. Every element of the offense must be alleged, and an averment that the defendant conspired to defraud the United States in “certifying that certain false and fraudulent accounts and vouchers for material furnished for use in the construction of, &c., and for labor performed on said building, were true and correct,” is too uncertain. *United States v. Walsh*, 5 Dillon, 58, 28 Fed. Cas. 394. And so is the allegation of the unlawful tender of money to “certain Federal officials, to wit, the officers of the court of the United States acting under authority of the government of the United

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States for the southern division of the northern district of Alabama," and does not sufficiently inform the defendant of the nature of the charge against him. *United States v. Milner*, 36 F. R. 890. And an indictment in which the conspiracy is insufficiently charged cannot be aided by averring acts done by one or more of the conspirators in furtherance of the object of the conspiracy. *United States v. Britton*, 108 U. S. 199, 27 L. ed. 698.

It is not necessary to describe the offense in an indictment for conspiracy as in an indictment for the offense itself. *Geist v. United States*, 26 App. D. C. 594; *Ching v. United States*, 118 F. R. 538; *United States v. De Grieff*, 16 Blatch. 20, 25 Fed. Cas. 799. It is enough if it is as definite as the proof. *Hyde v. United States*, 27 App. D. C. 362. It must show sufficient facts so the conspiracy can be identified. *United States v. Taffe*, 86 F. R. 113. It must allege to some extent the means to be used but not the details. *United States v. Grunberg*, 131 F. R. 137, affirmed 145 Id. 81; *Perrin v. United States*, 169 Id. 17. An indictment for conspiracy to commit subornation of perjury need not give the names of the persons intended to be suborned. *Williamson v. United States*, 207 U. S. 425, 52 L. ed. 278. An indictment for conspiracy to deprive government of public lands need not particularly describe the lands. *United States v. McKinley*, 126 F. R. 242. But for a conspiracy to obtain title to mineral lands not subject to entry it must allege that the lands contained minerals and that the defendants knew it. *United States v. Peuschel*, 116 F. R. 642. An indictment for conspiracy to defraud the United States of public lands by false entries is not bad because of failure to aver knowledge on the part of the defendants that the entries were fraudulent. *United States v. Mitchell*, 141 F. R. 666. Though the punishment of the offense is a felony, the indictment need not charge that the act was done feloniously. *Bannon v. United States*,

156 U. S. 464, 466, 39 L. ed. 494. An indictment for conspiracy to violate § 215 must set out conspiracy to devise a scheme to defraud, intention to defraud, intention to use the mails for that purpose, and the scheme itself; the names of the persons to be defrauded may be alleged as unknown. *Miller v. United States*, 133 F. R. 337. See also *McConkey v. United States*, 171 Id. 829. An indictment was held not bad for repugnancy because it charged conspiracy to violate § 215 by "dealing and pretending to deal" in what is called "green articles" and "spurious Treasury notes." *Lehman v. United States*, 127 F. R. 41. In a conspiracy to violate § 215 each mailing is a separate act and may be the subject of a separate indictment. *Francis v. United States*, 152 F. R. 155, 144 Id. 520.

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The punishment prescribed by this section being infamous, the prosecution therefor must be by indictment. *United States v. Brady*, 3 Crim. L. Mag. 69; *Mackin v. United States*, 117 U. S. 348, 29 L. ed. 909; *United States v. Wells*, 163 F. R. 313. But as to a conspiracy to make counterfeit coin, see *United States v. Burgess*, 9 F. R. 896. See further, as to the requisites of an indictment, *United States v. Gordon*, 22 F. R. 250; *United States v. Green*, 136 Id. 618.

This section applies to a conspiracy against the United States when committed in the District of Columbia (*In re Wolf*, 27 F. R. 606), though the defendant is an Indian. *Id.* The trial may be had in any district where the overt acts were committed. *United States v. Rindskopf*, 6 Rev. 259. Conspiracy at common law not being defined by any Act of Congress as an offense against the government, the Federal courts have no cognizance thereof. *United States v. Martin*, 4 Cliff. 156, 26 Fed. Cas. 1175.

Where an assessor of internal revenue was indicted hereunder, and also under Rev. Sts. §§ 3168, 3169, for having entered into a corrupt arrangement with certain distillers to defraud the government, and before trial proposed terms



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of compromise to the commissioner of internal revenue under Rev. Sts. §§ 3229, 3231, it was held that the case did not come within the purview of those statutes. 14 A. G. Op. 43; but see *Grunberg v. United States*, 145 F. R. 81. Where a conspiracy is formed and overt acts are done in pursuance of it more than three years prior to the indictment, if the conspiracy continues and further acts are done within three years the action is not barred by the statute of limitations. *Ware v. United States*, 154 F. R. 577; *Jones v. United States*, 162 Id. 417; *United States v. Barber*, 157 Id. 889; *United States v. Bradford*, 152 Id. 617, 148 Id. 413; *United States v. Brace*, 149 Id. 874; *United States v. Greene*, 146 Id. 803, 115 Id. 343; *Lorenz v. United States*, 24 App. D. C. 337. See, however, *United States v. Black*, 160 F. R. 431; *United States v. Biggs*, 157 Id. 264 (on appeal this point was expressly left undecided, 211 U. S. 507, 53 L. ed. 305); *Ex parte Black*, 147 F. R. 832, *United States v. McCord*, 72 Id. 159; *United States v. Owen*, 32 Id. 534.

In *Ex parte Carstendick*, 93 U. S. 396, 23 L. ed. 889, decided in 1876, the Supreme Court held that effect must be given to this section as if it read: "All the parties to such a conspiracy shall be liable to a penalty of not less than \$1000, and not more than \$10,000, and to imprisonment not more than two years." A salaried employee of the United States is disqualified to serve as a juror in a trial under this section. *Crawford v. United States*, 212 U. S. 183, 53 L. ed. 465. A civil suit for the penalty under Rev. Sts. § 3296 is barred by conviction and punishment for the same act under this section. *United States v. McKee*, 4 Dill. 128, 26 Fed. Cas. 1116; and see *People v. Piat*, 19 N. Y. Misc. 131; *Rollins v. Breed*, 54 Hun, 485.

As to the distinction between this and conspiracy under § 19, see *United States v. Patrick*, 54 F. R. 338, 341, 349.

SECTION 38. Whoever shall willfully do, or aid or advise in the doing of any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property, or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any captor or claimant of such property, shall be fined not more than ten thousand dollars, or imprisoned not more than five years, or both.

**Fraudulent  
interference with  
delivery,  
etc., of  
prize  
property**

This section is the same as U. S. Rev. Sts. § 5441.

SECTION 39. Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years.

**Bribery of  
United  
States  
officer**

This section is the same as U. S. Rev. Sts. § 5451. *United States v. Worrall*, 2 Dall. 384; *United States v. Gibson*, 47 F. R. 833; *United States v. Van Leuven*, 62 Id. 62; *Vernon v. United States*, 146 Id. 121. The phrase "any officer of the United States" includes a special secret-service operative employed to aid in the suppression and detection of revenue frauds. *United States v. Ingham*, 97 F. R. 935.

**Bribery of  
United  
States  
officer**

It does not include a member of Congress: 17 A. G. Op. 420; or a Chinese interpreter acting as such at a hearing on a criminal charge. *In re Yee Gee*, 83 F. R. 145. An offer to pay money to a postmaster for an unlawful sale by him of postage stamps is within this section although his commissions thereon from the government will be no greater than upon a lawful sale for cash of an equal amount of postage stamps. *In re Palliser*, 136 U. S. 257, 264, 34 L. ed. 514. The tender to an officer by a person of his personal check drawn on a bank and payable to the officer for the purpose of influencing his action is not bribery as the check drawn for such purpose is void. *United States v. Green*, 136 F. R. 618.

“*Lawful duty.*” Where the reward was offered to induce an officer to disclose reports, it is immaterial that there is no statute forbidding the disclosure or that the reports were not yet in existence. *Benson v. United States*, 27 App. D. C. 331, 335; and see *Benson v. Henkel*, 198 U. S. 1, 49 L. ed. 919; *United States v. Haas*, 163 F. R. 908; *Haas v. Henkel*, 166 Id. 621. The offer of a reward to an officer to refrain from the performance of duties for the performance of which there was no legal or constitutional warrant is not within this section. *United States v. Boyer*, 85 F. R. 425. Where a territorial statute provides that when two or more defendants are jointly indicted for a felony, any defendant requiring it must be tried separately, it was held that a defendant indicted under this section was entitled to a separate trial. *United States v. Jones*, 5 Utah, 552.

**Unlawfully  
taking or  
using  
papers re-  
lating to  
claims**

SECTION 40. Whoever shall take and carry away, without authority from the United States, from the place where it has been filed, lodged, or deposited, or where it may for the time being actually be kept by authority of the United States, any certificate, affidavit, deposition, written statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper, prepared, fitted, or intended to be used or presented in order to procure the payment of money from or by the United States, or any officer or agent

thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof, has or has not already been allowed or paid; or whoever shall present, use, or attempt to use, any such document, record, file, or paper so taken and carried away, in order to procure the payment of any money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Unlawfully taking or using papers relating to claims

This section is the same as U. S. Rev. Sts. § 5454, except that the words "or both" are added at the end of the section.

SECTION 41. No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company, association, or firm. Whoever shall violate the provision of this section shall be fined not more than two thousand dollars and imprisoned not more than two years.

Persons interested not to act as government agents

This section is founded on U. S. Rev. Sts. § 1783, and has been changed so as to apply to the officers and agents of "any" corporation and "any joint stock company or association." There is also a slight change in the punishment.

Purchase of coal by the Post Office Department from a firm of which one partner was a Superintendent of Free Delivery was ruled not contrary to Rev. Sts. § 1783 which is incorporated in this section. 24 A. G. Op. 557.

SECTION 42. Whoever shall entice or procure, or attempt or endeavor to entice or procure, any soldier in the military service, or any seaman or other person in the naval service of the United States, or who has been recruited for such ser-

Enticing desertion from Army or Navy

**Enticing  
desertion  
from Army  
or Navy**

vice, to desert therefrom, or shall aid any such soldier, seaman, or other person in deserting or in attempting to desert from such service; or whoever shall harbor, conceal, protect, or assist any such soldier, seaman, or other person who may have deserted from such service, knowing him to have deserted therefrom, or shall refuse to give up and deliver such soldier, seaman, or other person on the demand of any officer authorized to receive him, shall be imprisoned not more than three years and fined not more than two thousand dollars.

This section is the same as U. S. Rev. Sts. §§ 1553 and 5455, as modified by Act of Feb. 27, 1877, c. 69 (19 St. 253).

*Kurtz v. Moffitt*, 115 U. S. 487, 502, 29 L. ed. 458; *United States v. Thompson*, 2 Sprague, 103; *United States v. Clark*, Id. 55, 25 Fed. Cas. 452.

**Enticing  
workmen  
from arsen-  
als or  
armories**

SECTION 43. Whoever shall procure or entice any artificer or workman retained or employed in any arsenal or armory, to depart from the same during the continuance of his engagement, or to avoid or break his contract with the United States; or whoever, after due notice of the engagement of such workman or artificer, during the continuance of such engagement, shall retain, hire, or in anywise employ, harbor, or conceal such artificer or workman, shall be fined not more than fifty dollars, or imprisoned not more than three months, or both.

This section is practically the same as U. S. Rev. Sts. § 1668 with the addition of the words "or both" at the end of the section. Also "artificer" has been substituted for "armorers."

**Injuries to  
fortifica-  
tions, etc.**

SECTION 44. Whoever shall willfully trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo, or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

This section is founded on the Act of July 7, 1898, c. 576, § 1 (30 St. 717). There are several changes.

SECTION 45. Whoever shall go upon any military reservation, army post, fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall reenter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

Unlawfully entering fort, etc.

This section is new.

SECTION 46. Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Robbery of personal property of United States

This section is the same as U. S. Rev. Sts. § 5456 with a slight change in the punishment.

United States *v.* Jones, 69 F. R. 973. Postage stamps belonging to the United States are personal property within this section. Jolly *v.* United States, 170 U. S. 402, 42 L. ed. 1085. So are blank checks though their value is purely nominal. Keller *v.* United States, 168 F. R. 697. State courts have jurisdiction so far and only so far as the property taken does not belong to the United States. *Ex parte* Roach, 166 F. R. 344.

SECTION 47. Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Embezzling public moneys, etc.

This section is founded on the Act of March 3, 1875, c. 144 (18 St. 479), except that the provision authorizing the trial of the offender either in the district in which the offense may have been committed or in which he may carry or have in possession the property embezzled is omitted. Faust *v.* United States, 163 U. S. 452, 41 L. ed. 224; Moore *v.* United States, 160 Id. 268, 40 L. ed. 422; Dimmick *v.*

**Embezzling public moneys, etc.**

United States, 135 F. R. 257; *McKnight v. United States*, 97 Id. 208, 215. Embezzlement means common law embezzlement. *United States v. Allen*, 150 F. R. 152. A postmaster who uses in his private business money received through the money order department is guilty of embezzlement though he intended to replace it and did replace it after his arrest and before his preliminary examination. *United States v. Gilbert*, 17 Int. Rev. Rec. 54, 25 Fed. Cas. 1318. A general description of the money embezzled is sufficient. *McBride v. United States*, 101 F. R. 821. An indictment charging that certain persons conspired to steal certain property of the United States and in execution of the conspiracy did steal, charges conspiracy and not larceny. *United States v. Gardner*, 42 F. R. 829. A court-martial may try a soldier for larceny although he has been acquitted on an indictment found by a grand jury. *In re Esmond*, 5 Mackey, 64.

**Receiving, etc., stolen public property**

SECTION 48. Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both, and such person may be tried either before or after the conviction of the principal offender.

This section is founded on Act of March 3, 1875, c. 144, § 2 (18 St. 479), except an omission similar to that in the preceding section and also of the provision that the judgment of conviction of the principal shall be conclusive evidence against the receiver, etc.

*United States v. De Bare*, 6 Biss. 358, 25 Fed. Cas. 796. The last clause of this section as originally enacted was unconstitutional. *Kirby v. United States*, 174 U. S. 47, 43 L.

ed. 890. On the question of knowledge that the goods were stolen from a Navy Yard, evidence that the defendant had previously received and purchased similar goods stolen from the Navy Yard at other times is admissible. *Sapir v. United States*, 174 F. R. 219.

Receiving,  
etc., stolen  
public prop-  
erty

SECTION 49. Whoever shall cut, or cause or procure to be cut, or shall wantonly destroy, or cause to be wantonly destroyed, any timber growing on the public lands of the United States; or whoever shall remove, or cause to be removed, any timber from said public lands, with intent to export or to dispose of the same; or whoever, being the owner, master, or consignee of any vessel, or the owner, director, or agent of any railroad, shall knowingly transport any timber so cut or removed from said lands, or lumber manufactured therefrom, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. Nothing in this section shall prevent any minor or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States. And nothing in this section shall interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands.

Timberdep-  
redations  
on public  
lands

This section is founded on the Act of June 3, 1878, c. 151, § 4 (20 St. 90). The Act of Aug. 4, 1892, c. 375, § 2 (27 St. 348), extended the provisions of the Act of June 3, 1878, to all the "public-land States." There are changes in phraseology and a change in punishment.

*United States v. Konkapot*, 43 F. R. 64; *United States v. Pine River, etc. Co.*, 89 Id. 907; *Grubbs v. United States*, 105 Id. 314; *Bryant v. United States*, Id. 941; *Morgan v. United States*, 148 Id. 189; *King-Ryder Lumber Co. v. Scott*, 73 Ark. 329, 331; 16 A. G. Op. 189; 17 Id. 592; 18 Id. 435. Boxing and chipping trees for turpentine is not a violation of this section. *United States v. Leatherbury*, 27 F. R. 606, 32 Id. 780. "*Timber*" is here used for live growing trees of a useful class. *United States v. Stores*, 14 F. R. 824, 4 Woods,



**Timber depredations on public lands**

641; it does not include small, brittle trees like "mesquite" good only for firewood. *Bustemente v. United States*, 4 Ariz. 344; *Bearce v. Dudley*, 88 Me. 410. But it is not confined to timber adapted to house or ship building. *United States v. Soto*, 7 Ariz. 230. The only intent necessary to prove is the intent to export or dispose of the timber. *Teller v. United States*, 113 F. R. 273. But that intent must be alleged and proved. *United States v. Hacker*, 73 F. R. 292; *United States v. Garretson*, 42 Id. 22. While it is lawful for a settler to cut timber for the purpose of clearing his claim, the cutting must be incidental to the mining or cultivation; the latter must not be used as a pretext. *United States v. Smith*, 8 Sawyer, 100, 107, 11 F. R. 487; *United States v. Young*, 8 Sawyer, 108; *United States v. Nelson*, 5 Id. 68; *United States v. Williams*, 18 F. R. 475; *United States v. Murphy*, 32 Id. 376. Land duly entered as a homestead does not cease to be public land so long as any proceedings are pending respecting it in the land department, even though it may be subject to state taxation. *Shiver v. United States*, 159 U. S. 491, 499, 40 L. ed. 231; see, however, *Hawley v. Diller*, 178 Id. 476, 44 L. ed. 1157. If the timber is cut by the settler on his claim for purposes of cultivation, he may sell any surplus over what he needs for his improvements. *The Timber Cases*, 3 McCrary, 519, 11 F. R. 81. Taking timber for use in a quartz mill adjoining is not within the exception. *English v. United States*, 116 F. R. 625, 107 Id. 867. A contract to permit another to cut timber for purposes other than would be lawful for the settler is void, and no recovery can be had under it. *Ladda v. Hawley*, 57 Cal. 51. The government may sue for the conversion of timber wrongfully cut, or recover it in an action of replevin: *English v. United States*, 116 F. R. 625; *United States v. Ball*, 31 Id. 667; *United States v. Lané*, 19 Id. 910; *United States v. Williams*, 18 Id. 475 (see *United States v. Yoder*, 18 Id. 372); *Cotton v. United States*, 11

How. 229, even though the defendant has been acquitted on a criminal charge therefor. *Stone v. United States*, 167 U. S. 178, 42 L. ed. 127, 64 F. R. 667, 49 Id. 848. As to the measure of damages see *United States v. Williams*, 18 F. R. 475; *United States v. Heilner*, 26 Id. 80; *Woodenware Co. v. United States*, 106 U. S. 432, 27 L. ed. 230; *Bly v. United States*, 4 Dill. 464. **Timberdepredations on public lands**

SECTION 50. Whoever shall unlawfully cut, or aid in unlawfully cutting, or shall wantonly injure or destroy, or procure to be wantonly injured or destroyed, any tree, growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both. **Timber, etc., depredations on reservations or Indian lands**

This section is founded on U. S. Rev. Sts. § 5388, and enlarged by Act of March 3, 1875, c. 151, § 1 (18 St. 481), and Act of June 4, 1888, c. 340 (25 St. 166). *Dent v. United States*, 8 Ariz. 138; *Crawford v. Burr*, 2 Alaska, 33, 36; *Citizens' State Bank v. Bonnes*, 83 Minn. 1; 22 A. G. Op. 266. No provision is hereby made for seizure of property belonging to a wrongdoer. 18 A. G. Op. 555. This section applies only to standing timber. *United States v. Konkapot*, 43 F. R. 64, 66. It does not apply to timber on lands allotted to Indians in severalty: 19 A. G. Op. 183; nor to timber on lands of the Cherokee Indians. *United States v. Reese*, 5 Dill. 405, 27 Fed. Cas. 742; 18 A. G. Op. 555. As to meaning of "*public purposes*" see *United States v. Garretson*, 42 F. R. 22, 25.

SECTION 51. Whoever shall cut, chip, or box any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location, made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance, or shall **Boxing, etc., trees, for turpentine**

**Boxing,  
etc., trees,  
for turpen-  
tine**

knowingly encourage, cause, procure, or aid in the cutting, chipping, chopping, or boxing of any such tree, or shall buy or trade for, or in any manner acquire any pitch, turpentine, or other substance, or any article of commodity made from any such pitch, turpentine, or other substance, when he has knowledge that the same has been so unlawfully obtained from such trees, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

This section is the same as Act of June 4, 1906, c. 2571 (34 St. 208), with a slight change in phraseology.

**Setting fire  
to timber  
on public  
lands**

SECTION 52. Whoever shall willfully set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

This section is taken from Act of Feb. 24, 1897, c. 313, § 1 (29 St. 594). There are a few changes in phraseology, including the omission of the words "or maliciously."

**Failing to  
extinguish  
fires**

SECTION 53. Whoever shall build a fire in or near any forest, timber or other inflammable material upon the public domain shall, before leaving said fire, totally extinguish the same; and whoever shall fail to do so shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

This section is taken from Act of Feb. 24, 1897, c. 313, § 2 (29 St. 594). There is a slight change in phraseology. See Act of May 5, 1900, c. 349 (31 St. 169).

**Fines to be  
paid into  
school funds**

SECTION 54. In all cases arising under the two preceding sections the fines collected shall be paid into the public school fund of the county in which the lands where the offense was committed are situated.

This section is the same as Act of Feb. 24, 1897, c. 313, § 3 (29 St. 594). See Act of May 5, 1900, c. 349 (31 St. 169).

SECTION 55. Whoever, except forest rangers and other persons employed by the United States to protect the forest, federal and state officers in the discharge of their duties, and the employees of the water board of the city of Portland, State of Oregon, shall knowingly trespass upon any part of the reserve known as Bull Run National Forest, in the Cascade Mountains, in the State of Oregon, or shall enter thereon for the purpose of grazing stock, or shall engage in grazing stock thereon, or shall permit stock of any kind to graze thereon, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

Trespassing on Bull Run National Forest, Oregon

This section is taken from the Act of April 28, 1904, c. 1774, § 1 (33 St. 526). Changes are made in the phraseology and in the punishment. The last sentence directing the Secretary of the Interior to enforce its provisions is omitted, as the power is conferred in general acts which apply to all reservations.

SECTION 56. Whoever shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States which, in pursuance of any law, have been reserved or purchased by the United States for any public use; or whoever shall drive any cattle, horses, hogs, or other live stock upon any such lands for the purpose of destroying the grass or trees on said lands, or where they may destroy the said grass or trees; or whoever shall knowingly permit his cattle, horses, hogs, or other live stock, to enter through any such inclosure upon any such lands of the United States, where such cattle, horses, hogs, or other live stock may or can destroy the grass or trees or other property of the United States on the said lands, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both; *Provided*, That nothing in this section shall be construed to apply to unreserved public lands.

Breaking fences, driving cattle, etc., on inclosed public lands

This section is a combination of §§ 2 and 3 of the Act of March 3, 1875, c. 151 (18 St. 481), "or other live stock" having been thrice inserted. For the proviso at the end of § 3 the words "provided, that nothing in this section shall be construed to apply to unreserved public lands," are substituted.

**Injuring  
or remov-  
ing survey  
marks**

**SECTION 57.** Whoever shall willfully destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or shall willfully cut down any witness tree or any tree blazed to mark the line of a Government survey, or shall willfully deface, change, or remove any monument or bench mark of any Government survey, shall be fined not more than two hundred and fifty dollars, or imprisoned not more than six months, or both.

This section is taken from the Act of June 10, 1896, c. 398 (29 St. 343). The word "willfully" is inserted before "destroy"; there is a change in the punishment, and the provision authorizing the payment of \$25 to an informer is omitted.

**Interrupt-  
ing surveys**

**SECTION 58.** Whoever in any manner, by threats or force, shall interrupt, hinder, or prevent the surveying of the public lands, or of any private land claim which has been or may be confirmed by the United States, by the persons authorized to survey the same, in conformity with the instructions of the Commissioner of the General Land Office, shall be fined not more than three thousand dollars and imprisoned not more than three years.

This section is the same as U. S. Rev. Sts. § 2412, except a change in the punishment.

**Agree-  
ments to  
prevent  
bids at  
land sales**

**SECTION 59.** Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

This section is the same as U. S. Rev. Sts. § 2373.

This section was intended to protect the government and punish combinations to prevent others from bidding at sales,

but specific performance will be enforced of an agreement to convey lands to be purchased at a subsequent sale. *Fadsler v. Ford*, 24 How. 322. An agreement among settlers on unsurveyed public lands to purchase them as soon as they are surveyed and offered for sale and then mortgage them to a creditor to secure a debt is not a violation of this section. *Wright v. Shumway*, 1 Biss. 23. The objection that there was a combination to prevent bidding can be taken only by the government. *Easley v. Kellom*, 14 Wall. 279, 20 L. ed. 890. One who is not injured thereby cannot defeat the title of a purchaser at a sale of public land by auction, by showing that a combination to prevent bidding was formed. *Root v. Shields*, Woolw. 340. An agreement to attend a sale of public lands and purchase certain land is not a violation hereof. *Pearsons v. Lee*, 2 Ill. 193. Such an agreement is not void. *Switzer v. Skiles*, 8 Ill. 529.

**Agreements to prevent bids at land sales**

SECTION 60. Whoever shall willfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line or system, operated or controlled by the United States, whether constructed, or in process of construction, or shall willfully or maliciously interfere in any way with the working or use of any such line, or system, or shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line, or system, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

**Injuries to United States telegraph, etc. lines**

This section is taken from the Act of June 23, 1874, c. 461, (18 St. 250). It is made to include telephone and cable lines and systems. The fine of "not less than one hundred nor more than one thousand dollars" is changed to "not more than one thousand dollars."

SECTION 61. Whoever shall knowingly issue or publish any counterfeit weather forecast or warning of weather conditions falsely representing such forecast or warning to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the Government

**Counterfeiting weather forecasts**

**Counter-  
feiting  
weather  
forecasts**

service, shall be fined not more than five hundred dollars, or imprisoned not more than ninety days, or both.

This section appears in the Agricultural Appropriation Acts, 28 St. 274, 737, 29 St. 108.

**Molesting  
Animal  
Industry  
employees**

SECTION 62. Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, or on account of the execution of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

This section is taken from Act of March 3, 1905, c. 1496, § 5 (33 St. 1265). As to assaults, etc. there is a slight change in the punishment. As to discharging weapons the words "or both" are added at the end of the section.

**Forging  
customs  
entry cer-  
tificates**

SECTION 63. Whoever shall forge, counterfeit, or falsely alter any certificate of entry made or required to be made in pursuance of law by any officer of the customs, or shall use any such forged, counterfeited, or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than ten thousand dollars and imprisoned not more than three years.

This section is the same as U. S. Rev. Sts. § 5417.

**Concealing  
or destroy-  
ing in-  
voices, etc.**

SECTION 64. Whoever shall willfully conceal or destroy any invoice, book, or paper relating to any merchandise liable to duty, which has been or may be imported into the United States from any foreign port or country, after an inspection thereof has been demanded by the collector of any collection district, or shall at any time conceal or destroy any such invoice, book, or paper for the purpose of suppressing any evidence of fraud therein contained, shall be fined not more

than five thousand dollars, or imprisoned not more than two years, or both.

Concealing  
or destroy-  
ing in-  
voices, etc.

This section is the same as U. S. Rev. Sts. § 5443. See *United States v. De Grieff*, 16 Blatch. 20.

SECTION 65. Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer of the customs or of the internal revenue, or his deputy, or any person assisting him in the execution of his duties, or any person authorized to make searches and seizures, in the execution of his duty, or shall rescue, attempt to rescue, or cause to be rescued, any property which has been seized by any person so authorized; or whoever before, at, or after such seizure, in order to prevent the seizure or securing of any goods, wares, or merchandise by any person so authorized, shall stave, break, throw overboard, destroy, or remove the same, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any person authorized to make searches or seizure, in the execution of his duty, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duty, shall be imprisoned not more than ten years.

Resisting  
revenue  
officers;  
rescuing or  
destroying  
seized prop-  
erty, etc.

This section is the same as U. S. Rev. Sts. § 5447, except the words "or of the internal revenue" are added and slight modifications are made in the phraseology and in the punishment. *United States v. McEwan*, 44 F. R. 594.

This section applies to a case of active, forcible interference by a person with a customs or revenue officer, or with one assisting such officer in the performance of his duty as such, and the interference must be with the intent to impede or prevent the performance of the duty. *Ex parte Murray*, 35 F. R. 496. It does not exempt a customs officer from arrest under civil process from a State court. *Id.* But in general Federal officers, when acting under Federal laws, are not liable to State prosecution for acts so done. *In re Waite*, 81 F. R. 359. The phrases "*any officer*" and "*execution of his duties*" refer to official character and official duty, and an act done by a revenue officer, as an individual



**Resisting  
revenue  
officers;  
rescuing or  
destroying  
seized prop-  
erty, etc.**

simply, is not within this section. *United States v. Baird*, 48 F. R. 554. Using a deadly weapon in resisting an Indian agent who was making search for spirituous liquors on the reservation was held not within this section. *Mackey v. Miller*, 126 F. R. 161. It is no defense that the object of the assault was merely personal chastisement of the officer if the defendant knew the officer was engaged in the discharge of his duties. *United States v. Kern*, 5 Mason, 453.

**Falsely  
assuming  
to be a rev-  
enue officer**

SECTION 66. Whoever shall falsely represent himself to be a revenue officer, and, in such assumed character, demand or receive any money or other article of value from any person for any duty or tax due to the United States, or for any violation or pretended violation of any revenue law of the United States, shall be fined not more than five hundred dollars and imprisoned not more than two years.

This section is the same as U. S. Rev. Sts. § 5448, except that the provision as to punishment is substituted for "shall be deemed guilty of a felony, and shall be fined five hundred dollars, and imprisoned not less than six months and not more than two years." See *United States v. Brown*, 119 F. R. 482. See also *United States v. Curtain*, 43 Id. 433; *United States v. Ballard*, 118 Id. 757; *United States v. Farnham*, 127 Id. 478.

**Offering  
presents to  
customs  
officer**

SECTION 67. Whoever, being engaged in the importation into the United States of any goods, wares, or merchandise, or being interested as principal, clerk, or agent in the entry of any goods, wares, or merchandise, shall at any time make, or offer to make, to any officer of the revenue, any gratuity or present of money or other thing of value, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

This section is the same as U. S. Rev. Sts. § 5452, except the addition of the words "or both" at the end.

**Admitting  
entries for  
less than  
legal duties**

SECTION 68. Whoever, being an officer of the revenue, shall, by any means whatever, knowingly admit or aid in admitting to entry, any goods, wares, or merchandise, upon pay-

ment of less than the amount of duty legally due thereon, shall be removed from office and fined not more than five thousand dollars, or imprisoned not more than two years, or both.

Admitting  
entries for  
less than  
legal duties

This section is the same as U. S. Rev. Sts. § 5444, except the addition of the words "or both" at the end.

"Entry" is not confined to the act of filing the document known as an "entry." *United States v. Mescall*, 164 F. R. 584. This section may be violated though the dishonest act of the officer was one which he was not obliged to do, and could not legally do. *United States v. Rosenthal*, 126 F. R. 766.

SECTION 69. Whoever, by any means whatever, shall knowingly effect, or aid in effecting, any entry of goods, wares, or merchandise, at less than the true weight or measure thereof, or upon a false classification thereof, as to quality or value, or by the payment of less than the amount of duty legally due thereon, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

Securing  
false entry  
of goods

This section is the same as U. S. Rev. Sts. § 5445.

"Entry" is not confined to the act of filing the document known as an "entry." *United States v. Mescall*, 164 F. R. 587.

The offenses defined by this section are crimes arising under the revenue laws of the United States. *United States v. Hirsch*, 100 U. S. 33, 25 L. ed. 539. They may be charged conjunctively in the same count. Unless the fraudulent means used are specified the indictment will be insufficient. *United States v. Bettilini*, 1 Woods, 654. The forgery of writings used in entering goods at the custom-house is punishable under § 28, notwithstanding the penalty prescribed by this section. *United States v. Lawrence*, 13 Blatch. 211. It is immaterial that the custom-house practices by which the fraud is effected are not authorized by law. *United States v. Rosenthal*, 126 F. R. 766.

SECTION 70. Whoever, being a consul, or vice-consul, or other person employed in the consular service of the United States, shall knowingly certify falsely to any invoice, or other paper, to which his certificate is by law authorized or required,

False certi-  
fication by  
consular  
officer

**False certification by consular officer** shall be fined not more than ten thousand dollars and imprisoned not more than three years.

This section is the same as U. S. Rev. Sts. § 5442, except that the words "or other person employed in the consular service" are substituted for "commercial agent and vice-commercial agent."

**Taking seized property from revenue officer** SECTION 71. Whoever shall dispossess or rescue, or attempt to dispossess or rescue, any property taken or detained by any officer or other person under the authority of any revenue law of the United States, or shall aid or assist therein, shall be fined not more than three hundred dollars and imprisoned not more than one year.

This section is the same as U. S. Rev. Sts. § 5446.

**Forging or altering ship's or custom-house papers** SECTION 72. Whoever shall falsely make, forge, counterfeit, or alter any instrument in imitation of, or purporting to be, an abstract or official copy or certificate of the recording, registry, or enrollment of any vessel, in the office of any collector of the customs, or a license to any vessel for carrying on the coasting trade or fisheries of the United States, or a certificate of ownership, pass, passport, sea letter, or clearance, granted for any vessel, under the authority of the United States, or a permit, debenture, or other official document granted by any collector or other officer of the customs by virtue of his office; or whoever shall utter, publish, or pass, or attempt to utter, publish, or pass, as true, any such false, forged, counterfeited, or falsely altered instrument, abstract, official copy, certificate, license, pass, passport, sea letter, clearance, permit, debenture, or other official document herein specified, knowing the same to be false, forged, counterfeited, or falsely altered, with an intent to defraud, shall be fined not more than one thousand dollars and imprisoned not more than three years.

This section is the same as U. S. Rev. Sts. § 5423. *United States v. Schoyer*, 2 Blatch. 59, 27 Fed. Cas. 975. Alteration of a license issued under Rev. Sts. § 4441 is not an offense under this section or § 28. 19 A. G. Op. 649.

**Forging, etc., military bounty-land warrants, etc.** SECTION 73. Whoever shall falsely make, alter, forge, or counterfeit any military bounty-land warrant, or military bounty-land warrant certificate, issued or purporting to have been issued by the Commissioner of Pensions under any law

of Congress, or any certificate or duplicate certificate of location of any military bounty-land warrant, or military bounty-land warrant certificate upon any of the lands of the United States, or any certificate or duplicate certificate of the purchase of any of the lands of the United States, or any receipt or duplicate receipt for the purchase money of any of the lands of the United States, issued or purporting to have been issued by the register and receiver at any land office of the United States or by either of them; or whoever shall utter, publish, or pass as true, any such false, forged, or counterfeited military bounty-land warrant, military bounty-land warrant certificate, certificate or duplicate certificate of location, certificate or duplicate certificate of purchase, receipt or duplicate receipt for the purchase money of any of the lands of the United States, knowing the same to be false, forged, or counterfeited, shall be imprisoned not more than ten years.

Forging,  
etc.,  
military  
bounty-  
land  
warrants,  
etc.

This section is the same as U. S. Rev. Sts. § 5420, except a few changes in phraseology. *United States v. Spaulding*, 3 Smith (Dak.), 85. See note to § 29.

SECTION 74. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall knowingly aid or assist in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

Forging,  
etc., certi-  
ficates of  
citizenship

This section is the same as the Act of June 29, 1906, c. 3592, § 16 (34 St. 602).

SECTION 75. Whoever shall engrave, or cause or procure to be engraved, or assist in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship; or whoever shall sell any such plate, or shall bring into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor or other proper officer; or whoever shall have in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use or to suffer such plate to be used in forging or counterfeiting any such certificate or any part thereof; or whoever shall print, photograph, or in

Engraving,  
etc.,  
counter-  
feit plates  
for citizen-  
ship  
certificates

Engraving,  
etc.,  
counter-  
feit plates  
for citizen-  
ship  
certificates

any manner cause to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof; or whoever shall sell any such certificate, or shall bring the same into the United States from any foreign place, except by direction of some proper officer of the United States; or whoever shall have in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent unlawfully to use the same, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

This section is the same as the Act of June 29, 1906, c. 3592, § 17 (34 St. 602).

False  
persona-  
tion, etc.,  
in procur-  
ing natu-  
ralization

SECTION 76. Whoever, when applying to be admitted a citizen, or when appearing as a witness for any such person, shall knowingly personate any person other than himself, or shall falsely appear in the name of a deceased person, or in an assumed or fictitious name; or whoever shall falsely make, forge, or counterfeit any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens; or whoever shall utter, sell, dispose of, or shall use as true or genuine, for any unlawful purpose, any false, forged, antedated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or whoever shall sell or dispose of to any person other than the person for whom it was originally issued any certificate of citizenship or certificate showing any person to be admitted a citizen, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

This section is the same as U. S. Rev. Sts. § 5424, except a change in the punishment. The Act embodied in this section and § 77 repeals the Act of March 3, 1813, for the regulation of seamen. *United States v. Tynen*, 11 Wall. 88, 20 L. ed. 153. The offenses charged in this section and § 77 were formerly misdemeanors. *Berkowitz v. United States*, 93 F. R. 452; *United States v. York*, 131 Id. 323; see § 335. An

offense is committed under this section if the oath of the accused, being either "required or authorized" under the naturalization laws, is false. *United States v. Lehman*, 39 F. R. 49, 50. This section applies to any sale of naturalization papers, whether valid or invalid because of fraud. *United States v. Ragazzini*, 50 F. R. 923, 925. "*Make forge or counterfeit any oath*" etc. applies only to a written oath and not to false swearing in open court. *United States v. Lehman*, 39 F. R. 768, 770. An acquittal on a charge under § 37 of conspiring to utter as true a false naturalization certificate in violation of this section is no bar to a subsequent prosecution under this section. *Berkowitz v. United States*, 93 F. R. 452. As to whether the word "*whoever*" has broadened this section from its form in Rev. Sts. § 5424, see *United States v. York*, 131 F. R. 323, 327.

False personation, etc., in procuring naturalization

SECTION 77. Whoever shall use or attempt to use, or shall aid, assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, counterfeit, or antedated, or knowing the same to have been procured by fraud or otherwise unlawfully obtained; or whoever, without lawful excuse, shall knowingly possess any false, forged, antedated, or counterfeit certificate of citizenship purporting to have been issued under any law of the United States relating to naturalization, knowing such certificate to be false, forged, antedated, or counterfeit, with the intent unlawfully to use the same; or whoever shall obtain, accept, or receive any certificate of citizenship, knowing the same to have been procured by fraud or by the use or means of any false name or statement given or made with the intent to procure, or to aid in procuring, the issuance of such certificate, or knowing the same to have been fraudulently altered or antedated; or whoever, without lawful excuse, shall have in his possession any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization with the intent unlawfully to use the same; or whoever, after having been admitted to be a citizen, shall, on oath or by affidavit, knowingly deny that he has been so admitted, with the intent to evade or avoid any duty or liability imposed or required by law, shall be fined not

Using false certificate of citizenship. Denying citizenship

**Using  
false certi-  
ficate of  
citizenship.  
Denying  
citizenship**

more than one thousand dollars, or imprisoned not more than five years, or both.

This section is taken from U. S. Rev. Sts. § 5425, except that the provision as to the Bureau of Immigration and Naturalization is taken from the Act of June 29, 1906, c. 3592, § 19 (34 St. 602). There is a change in the punishment. See note to § 76. *United States v. Melfi*, 118 F. R. 899. Possession of a false certificate with intent to use the same is sufficient for a violation of this section without actual use. *Green v. United States*, 150 F. R. 560. In an indictment for obtaining, accepting, or receiving a certificate, knowing it to have been procured by fraud, the nature of the fraud must be set out. *United States v. Lehman*, 39 F. R. 768.

**Attempting  
to vote,  
etc., on  
false  
certificate**

SECTION 78. Whoever shall in any manner use, for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order, certificate, judgment, or exemplification has been unlawfully issued or made; or whoever shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

This section is the same as U. S. Rev. Sts. § 5426, except a slight change in the punishment.

The mere fact that the defendant knew that a naturalization certificate had been issued by a State court without his presence in court, and without any oath being taken by him, is not sufficient to warrant a conviction. *United States v. Burley*, 14 Blatch. 91, 24 Fed. Cas. 1301. It was alleged in an affidavit for a complaint of a violation of this section that one, for the purpose of registering himself a voter, unlawfully used a certificate of citizenship, knowing that it had been unlawfully issued or made; but as no statement was made as to how such use was unlawful, or how the certificate

had been unlawfully issued or made, it was held that sufficient cause for issuing a warrant was not shown. *In re Coleman*, 15 Blatch. 406.

Attempting to vote etc., on false certificate

SECTION 79. Whoever shall knowingly use any certificate of naturalization heretofore or which hereafter may be granted by any court, which has been or may be procured through fraud or by false evidence, or which has been or may hereafter be issued by the clerk or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; or whoever, for any fraudulent purpose whatever, shall falsely represent himself to be a citizen of the United States without having been duly admitted to citizenship, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

Falsely claiming citizenship

This section is the same as U. S. Rev. Sts. § 5428. An alien who makes a false affidavit that he has been duly naturalized as a citizen for the purpose of getting himself registered as a voter at a State election, violates this section. *Green v. United States*, 150 F. R. 560. The words "*duly admitted*" mean "regularly admitted." *United States v. Hamilton*, 157 F. R. 569.

SECTION 80. Whoever, in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken, shall be fined not more than one thousand dollars and imprisoned not more than five years.

Falsely swearing in naturalization cases

This section is the same as U. S. Rev. Sts. § 5395, except a change in phraseology and a slight change in punishment. *Moore v. United States*, 144 F. R. 962. An indictment under this section need not set out the declaration of intention made by the defendant. Such declaration must be under oath under Rev. Sts. § 2167. The record of the court in which the declaration was made is the best and only evidence thereof. It is not material that the record does not show the facts which gave the court jurisdiction. *United States v. Walsh*, 22 F. R. 644. It is sufficient if the defendant knowingly and willfully testified falsely; it is not necessary



**Falsely  
swearing  
in natural-  
ization cases**

that his act should also have been corrupt or malicious. *Holmgren v. United States*, 156 F. R. 439. This section applies to oaths which the naturalization laws require or authorize a person to take, though the proceedings are in a State court. *United States v. Severino*, 125 F. R. 949; *Schmidt v. United States*, 133 Id. 257; *Holmgren v. United States*, 156 Id. 439. Rev. Sts. § 2165 does not permit the oath of the applicant as proof of his residence, and an oath taken by him concerning it is extra-judicial and will not support an indictment for perjury under this section. *United States v. Grottkau*, 30 F. R. 672. The same is true of an affidavit under additional proceedings prescribed by a State. *United States v. Severino*, 125 F. R. 949. As the offense here defined is a felony, counts under this section may be joined with counts under §§ 77, 332. *United States v. Johannesen*, 35 F. R. 411; *United States v. Lehman*, 39 Id. 768, 773.

**Provisions  
applicable  
to all courts  
of natural-  
ization**

SECTION 81. The provisions of the five sections last preceding shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization may be commenced or attempted to be commenced, and whether such court was vested by law with jurisdiction in naturalization proceedings or not.

This section is the same as U. S. Rev. Sts. § 5429, except that the last clause beginning "and whether" is added. *United States v. Severino*, 125 F. R. 949; *Schmidt v. United States*, 133 Id. 257.

**Shanghai-  
ing of  
sailors de-  
scribed**

SECTION 82. Whoever, with intent that any person shall perform service or labor of any kind on board of any vessel engaged in trade and commerce among the several States or with foreign nations, or on board of any vessel of the United States engaged in navigating the high seas or any navigable water of the United States, shall procure or induce, or attempt to procure or induce, another, by force or threats or by representations which he knows or believes to be untrue, or while the person so procured or induced is intoxicated or under the influence of any drug, to go on board of any such vessel, or to sign or in anywise enter into any agreement to go

on board of any such vessel to perform service or labor thereon; or whoever shall knowingly detain on board of any such vessel, any person so procured or induced to go on board thereof, or to enter into any agreement to go on board thereof, by any means herein defined; or whoever shall knowingly aid or abet in the doing of any of the things herein made unlawful, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

Shanghai-  
ing of  
sailors de-  
scribed

This section is taken from the Act of March 2, 1907, c. 2539 (34 St. 1233). See 34 St. 551.

SECTION 83. It shall be unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for, or any election by any State legislature of a United States Senator. Every corporation which shall make any contribution in violation of the foregoing provisions shall be fined not more than five thousand dollars; and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

Corpora-  
tions con-  
tributing  
for political  
elections

This section is taken from Act of Jan. 26, 1907, c. 420 (34 St. 864).

SECTION 84. Whoever shall hunt, trap, capture, willfully disturb, or kill any bird of any kind whatever, or take the eggs of any such bird, on any lands of the United States which have been set apart or reserved as breeding grounds for birds, by any law, proclamation, or executive order, except under such rules and regulations as the Secretary of Agriculture may, from time to time, prescribe, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

Hunting,  
taking  
eggs, etc.,  
on bird-  
breeding  
grounds

This section is the same as Act of June 28, 1906, c. 3565 (34 St. 536), except that there is a slight change in the phraseology, and the proviso as to the "Black Hills Forest Reservation" is omitted.

## CHAPTER FIVE

## OFFENSES RELATING TO OFFICIAL DUTIES

- | SECTION   | SECTION  |
|---|--|
| 85. Officer, etc., of the United States guilty of extortion                   | 104. Certain officers forbidden to purchase, etc., witness, etc., fees   |
| 86. Receipting for larger sums than are paid                                  | 105. Falsely certifying, etc., as to record of deeds, etc.   |
| 87. Disbursing officer unlawfully converting, etc., public money              | 106. Other false certificates  |
| 88. Failure of Treasurer, etc., to safely keep public money                   | 107. Inspector of steamboats receiving illegal fees  |
| 89. Custodian of public money failing to safely keep, etc.                    | 108. Pension agent taking fee, etc.  |
| 90. Failure of officer to render accounts, etc.                               | 109. Officer not to be interested in claims against the United States  |
| 91. Failure to deposit as required  | 110. Member of Congress, etc., soliciting or accepting bribe, etc.   |
| 92. Provisions of the five preceding sections, to whom applicable             | 111. Offering, etc., Member of Congress bribe, etc.  |
| 93. Record evidence of embezzlement   | 112. Member of Congress taking consideration for procuring contract, office, etc.; offering member consideration, etc. |
| 94. Prima facie evidence  | 113. Member of Congress, etc., taking compensation in matters to which United States is a party                        |
| 95. Evidence of conversion  | 114. Member of Congress not to be interested in contract   |
| 96. Banker, etc., receiving deposit from disbursing officer                   | 115. Officer making contracts with Member of Congress  |
| 97. Embezzlement by internal-revenue officer, etc.                            | 116. Contracts to which two preceding sections do not apply  |
| 98. Officer contracting beyond specific appropriation                         | 117. United States officer accepting bribe   |
| 99. Officer of United States court failing to deposit moneys, etc.            | 118. Political contributions not to be solicited by certain officers   |
| 100. Receiving loan or deposit from officer of court                          | 119. Political contributions not to be received in public offices  |
| 101. Failure to make returns or reports                                       |  |
| 102. Aiding in trading in obscene literature                                  |  |
| 103. Collecting and disbursing officers forbidden to trade in public property |  |

SECTION

- 120. Immunity from official pro-  
scription
- 121. Giving money to officials for  
political purposes pro-  
hibited
- 122. Penalty for violating provi-  
sions of four preceding sec-  
tions

SECTION

- 123. Governmental officer, etc.,  
giving out advance in-  
formation respecting crop  
reports
- 124. Government officer, etc.,  
knowingly compiling or issu-  
ing false statistics respecting  
crops

SECTION 85. Every officer, clerk, agent, or employee of the United States, and every person representing himself to be or assuming to act as such officer, clerk, agent, or employee, who, under color of his office, clerkship, agency, or employ-  
**Extortion by officials**  
ment, or under color of his pretended or assumed office, clerkship, agency, or employment, is guilty of extortion, and every person who shall attempt any act which if performed would make him guilty of extortion, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

This section is taken from the Act of June 28, 1906, c. 3574 (34 St. 546), with the omission of the last sentence "except those officers or agents of the United States otherwise differently and specially provided for in the subsequent sections of this chapter." See U. S. Rev. Sts. § 5481. *United States v. Deaver*, 14 F. R. 595. This section is in force in Alaska and 4 St. 118, § 12 was in force there from the time of the cession of the territory to the United States to the enactment of the Revised Statutes. *United States v. Carr*, 3 Sawyer, 302, 25 Fed. Cas. 302. "*Officer of the United States*": A Chinese inspector is such officer. *Williams v. United States*, 168 U. S. 382, 42 L. ed. 509. An examining surgeon appointed by the Commissioner of Pensions is not such officer: *United States v. Germaine*, 99 U. S. 508, 25 L. ed. 482; neither is a special agent of the Land Department appointed under the Appropriation Act of June 4, 1897, c. 2 (30 Stat. 32). *United States v. Schlierholz*, 137 F. R. 616, 133 Id. 333. "*Extortion*" is the unlawful taking by an officer by color of his office, of any money or thing of value that is not due to him, or the taking of any money or

**Extortion  
by officials**

thing of value by color of his office in excess of what is due him or before it is due him. If a register of a land office undertakes to act as attorney for an applicant in procuring a patent and receives from him a gross sum in excess of his legal fees, which sum is taken as well for the execution of his official duties as for the doing of non-official work relating to the patent, and no designated portion of it is taken in payment for either class of services, he is guilty of extortion. *United States v. Waitz*, 3 Sawyer, 473, 2 L. & Eq. Repr. 42, 28 Fed. Cas. 386. See *Ogden v. Maxwell*, 3 Blatch. 319, 18 Fed. Cas. 613. To constitute extortion the money must be paid unwillingly. *United States v. Harned*, 43 F. R. 376.

**Receipting  
for larger  
sums than  
are paid**

SECTION 86. Whoever, being an officer, clerk, agent, employee, or other person charged with the payment of any appropriation made by Congress, shall pay to any clerk or other employee of the United States a sum less than that provided by law, and require such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employee of the Government and imprisoned not more than two years.

This section is the same as U. S. Rev. Sts. § 5483, except that the words "clerk, agent, employee, or other person" are inserted in the first line, and the words "not more than" in the last line.

A postmaster may be an "officer" within this provision. *United States v. Mayers*, 81 F. R. 159.

**Disburs-  
ing officers  
unlawfully  
using, etc.,  
public  
money**

SECTION 87. Whoever, being a disbursing officer of the United States, or a person acting as such, shall in any manner convert to his own use, or loan with or without interest, or deposit in any place or in any manner, except as authorized by law, any public money intrusted to him; or shall, for any purpose not prescribed by law, withdraw from the Treasurer or any assistant treasurer, or any authorized depository, or transfer, or apply, any portion of the public money intrusted to him, shall be deemed guilty of an embezzlement of the money so converted, loaned, deposited, withdrawn, trans-

ferred, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both.

Disbursing officers unlawfully using, etc., public money

This section is taken from U. S. Rev. Sts. § 5488. The words "or a person acting as such" are inserted in the second line, and the rest of the section is rewritten. *Carter v. McClaughry*, 183 U. S. 365, 396, 46 L. ed. 236, affirming 105 F. R. 614; *In re Carter*, 97 Id. 496; 15 A. G. Op. 288; 22 Id. 589. Money paid by foreign governments to the State Department and known as the "Indemnity Fund" is "*public money*." *Kieckhoefer v. United States*, 19 App. D. C. 405.

SECTION 88. If the Treasurer of the United States or any assistant treasurer, or any public depository, fails safely to keep all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other person having money of the United States, he shall be deemed guilty of embezzlement of the moneys not so safely kept, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years.

Failure of depositories to safely keep public deposits

This section is the same as U. S. Rev. Sts. § 5489. 15 A. G. Op. 288. Failure to disburse money on warrants in the manner prescribed in Rev. Sts. § 305 is an offense under this section. *Tucker v. Nebeker*, 2 App. D. C. 326, 336.

SECTION 89. Every officer or other person charged by any Act of Congress with the safe-keeping of the public moneys, who shall loan, use, or convert to his own use, or shall deposit in any bank or exchange for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safe-keeping, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years.

Custodian, etc., failing to keep, etc., public moneys

This section is founded on U. S. Rev. Sts. § 5490. There is a change in phraseology and a slight change in punishment. See the Act of Aug. 6, 1846, c. 90, § 16 (9 St. 63). *United States v. Forsythe*, 6 McLean, 584, 25 Fed. Cas.

**Custodian,  
etc., failing  
to keep,  
etc., public  
moneys**

1152; *United States v. Cook*, 17 Wall. 168, 21 L. ed. 538; 5 A. G. Op. 685; 7 Id. 82, 257; 25 Id. 484, 486; 26 Id. 330, 335. A clerk in the office of the assistant treasurer of the United States at Boston has been held to be an "officer." *United States v. Hartwell*, 6 Wall. 385, 18 L. ed. 830. A special Indian agent was ruled not to be an "officer." 13 A. G. Op. 588. Money paid to a deputy collector by inspectors of hulls and engines as money received by them from engineers and pilots, and the proceeds of the sale of goods forfeited under the revenue laws are "public moneys." *United States v. Bowerman*, 14 Int. Rev. Rec. 122, 24 Fed. Cas. 1208.

**Failure of  
officer to  
render  
accounts**

SECTION 90. Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law shall be deemed guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled and imprisoned not more than ten years.

This section is the same as U. S. Rev. Sts. § 5491, except a slight change in the punishment.

This section applies to all officers and other persons charged by it or any other act with the safe-keeping, transfer, and disbursement of public moneys. *United States v. Hutchinson*, 4 Pa. L. J. Rep. 211, 26 Fed. Cas. 452. It applies to a post office clerk acting as cashier. 5 A. G. Op. 685.

**Failure to  
deposit as  
required**

SECTION 91. Whoever, having money of the United States in his possession or under his control, shall fail to deposit it with the Treasurer, or some assistant treasurer, or some public depository of the United States, when required so to do by the Secretary of the Treasury, or the head of any other proper department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be fined in a sum equal to the amount of money embezzled and imprisoned not more than ten years.

This section is taken from U. S. Rev. Sts. § 5492. The words "or under his control" are inserted in the first line

and there is a slight change in the punishment. *United States v. Dimmick*, 112 F. R. 352; 15 A. G. Op. 288. The "requirement" to deposit need not be a special order, but may be by the general regulations of the treasury department. *Dimmick v. United States*, 121 F. R. 638, 112 Id. 350. **Failure to deposit as required**

SECTION 92. The provisions of the five preceding sections shall be construed to apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be indicted as receivers or depositaries of the same. **Persons affected**

This section is the same as U. S. Rev. Sts. § 5493.

SECTION 93. Upon the trial of any indictment against any person for embezzling public money under any provision of the six preceding sections, it shall be sufficient evidence, *prima facie*, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money. **Record evidence of embezzlement**

This section is the same as U. S. Rev. Sts. § 5494, except that the words "*prima facie*" are inserted. *United States v. Jessup*, 15 F. R. 790, 793. Where the items contained in the transcript are made up from hearsay it is not admissible in evidence. *United States v. Forsythe*, 6 McLean, 584, 25 Fed. Cas. 1152.

SECTION 94. The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, *prima facie* evidence of such embezzlement. **Prima facie evidence**



**Prima facie evidence**

This section is the same as U. S. Rev. Sts. § 5495. *United States v. Forsythe*, 6 McLean, 584, 25 Fed. Cas. 1152. This applies only to persons charged with the safe-keeping, transfer or disbursement of public money. 7 A. G. Op. 82.

**Evidence of conversion**

SECTION 95. If any officer charged with the disbursement of the public moneys accepts, receives, or transmits to the Treasury Department to be allowed in his favor any receipt or voucher from a creditor of the United States without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion by such officer to his own use of the amount specified in such receipt or voucher.

This section is the same as U. S. Rev. Sts. § 5496. *State v. Nicholls*, 50 La. Ann. 699.

**Banker, etc., receiving unauthorized deposits of public money**

SECTION 96. Every banker, broker, or other person not an authorized depositary of public moneys, who shall knowingly receive from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both.

This section is the same as U. S. Rev. Sts. § 5497, except that there is a change in the punishment. *Cook County Nat. Bank v. United States*, 107 U. S. 445, 449, 27 L. ed. 537; 15 A. G. Op. 288; 25 Id. 484, 486. The provisions of this section are not confined to bankers, etc. *United States v. Greene*, 146 F. R. 778.

SECTION 97. Any officer connected with, or employed in, the Internal-Revenue Service of the United States, and any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or other property of the United States, and any officer of the United States, or any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both.

**Embezzle-  
ment by  
internal-  
revenue  
officer**

This section is the same as the Act of Feb. 3, 1879, c. 42 (20 St. 280), except a slight change in the punishment. *Kieckhoefer v. United States*, 19 App. D. C. 405. This section is not limited to principal officers. *United States v. Hartwell*, 6 Wall. 385, 18 L. ed. 830.

SECTION 98. Whoever, being an officer of the United States, shall knowingly contract for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be fined not more than two thousand dollars and imprisoned not more than two years.

**Officer con-  
tracting  
beyond spe-  
cific appro-  
priation**

This section is the same as U. S. Rev. Sts. § 5503, except a slight change in the punishment. *Semmes v. United States*, 26 Ct. Cl. 119; *Rives v. United States*, 28 Id. 249; 21 Id. 244, 288.

SECTION 99. Whoever, being a clerk or other officer of a court of the United States, shall fail forthwith to deposit any money belonging in the registry of the court, or hereafter paid into court or received by the officers thereof, with the Treasurer, assistant treasurer, or a designated depository of the United States, in the name and to the credit of such court, or shall retain or convert to his own use or to the use of another any such money, is guilty of embezzlement, and shall be fined

**Court offi-  
cers failing  
to deposit  
money, etc.**

**Court officers failing to deposit money, etc.**

not more than the amount embezzled, or imprisoned not more than ten years, or both; but nothing herein shall be held to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court.

This section is the same as U. S. Rev. Sts. § 5504, except a change in the punishment. *Howard v. United States*, 184 U. S. 676, 686, 46 L. ed. 754; *Gregory v. Merchants' Nat. Bank*, 171 Mass. 67, 68; *Henry v. Sowles*, 28 F. R. 481; 14 A. G. Op. 362. The funds in the hands of an assignee in bankruptcy are not within this section. *United States v. Bixby*, 10 Biss. 238, 6 F. R. 375.

**Receiving loan, etc., from court officer**

SECTION 100. Whoever shall knowingly receive, from a clerk or other officer of a court of the United States, as a deposit, loan, or otherwise, any money belonging in the registry of such court, is guilty of embezzlement, and shall be punished as prescribed in the preceding section.

This section is the same as U. S. Rev. Sts. § 5505. *Howard v. United States*, *supra*.

**Failure to make returns or reports**

SECTION 101. Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any Act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such Act or regulation, shall be fined not more than one thousand dollars.

This section is the same as U. S. Rev. Sts. § 1780, except a slight change in the punishment.

**Aiding in obscene literature trade**

SECTION 102. Whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in violating any provision of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail, obscene or indecent publications, or representations, or means for preventing conception or producing abortion, or other article of indecent or immoral use or tendency, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

This section is the same as U. S. Rev. Sts. § 1785, except that "producing" is substituted for "procuring" and there

is a slight change in the punishment. See Act of July 24, 1897, c. 11, § 17 (30 St. 209). *United States v. Williams*, 3 F. R. 484, 489.

**Aiding in  
obscene  
literature  
trade**

**SECTION 103.** Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, shall carry on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both, and be removed from office, and thereafter be incapable of holding any office under the United States.

**Trading in  
public prop-  
erty by  
collecting  
or disburs-  
ing officer**

This section is taken from U. S. Rev. Sts. §§ 1788, 1789. There is a slight change in the punishment. These provisions are to be strictly construed. As originally enacted they were much narrower in their scope than at present. See 4 A. G. Op. 555; 14 Id. 352.

**SECTION 104.** Whoever, being a judge, clerk, or deputy clerk of any court of the United States, or of any territory thereof, or a United States district attorney, assistant attorney, marshal, deputy marshal, commissioner, or other person holding any office or employment, or position of trust or profit under the Government of the United States shall, either directly or indirectly, purchase at less than the full face value thereof, any claim against the United States for the fee, mileage, or expenses of any witness, juror, deputy marshal, or any other officer of the court whatsoever, shall be fined not more than one thousand dollars.

**Court offi-  
cials pur-  
chasing fees  
at less than  
face value**

This section is the same as Act of Feb. 25, 1897, c. 316 (29 St. 595), except changes in phraseology.

**SECTION 105.** Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any other instrument which by such law may be recorded, shall knowingly certify falsely that such conveyance or instrument has or has not been recorded, shall be fined not more than one thousand dollars, or imprisoned not more than seven years, or both.

**Falsely  
certifying  
as to record  
of deeds**

This section is new.

Other  
false cer-  
tificates

SECTION 106. Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

This section is new.

Steamboat  
inspectors  
taking  
illegal fees

SECTION 107. Every inspector of steamboats who, upon any pretense, receives any fee or reward for his services, except what is allowed to him by law, shall forfeit his office, and be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

This section is the same as U. S. Rev. Sts. § 5482.

Pension  
agents  
taking fee

SECTION 108. Every pension agent, or other person employed or appointed by him, who takes, receives, or demands any fee or reward from any pensioner for any service in connection with the payment of his pension, shall be fined not more than five hundred dollars.

This section is the same as U. S. Rev. Sts. § 5487.

Officers in-  
terested  
in claims  
against  
United  
States

SECTION 109. Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, shall act as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claim, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both.

This section is the same as U. S. Rev. Sts. § 5498.

Marshall v. Baltimore & Ohio R. R., 16 How. 314, 14

L. ed. 153; *Ex parte* Curtis, 106 U. S. 371, 27 L. ed. 232; *Heiss v. Adams*, 149 Mich. 645, 648. This section does not apply to an assistant attorney of the District of Columbia. 18 A. G. Op. 161. An officer of the Bureau of Military Justice cannot lawfully act as counsel for a claimant in the Court of Claims in prosecution of the claim of another army officer against the United States: 16 A. G. Op. 478; nor can a retired army officer. *In re* Winthrop, 31 Ct. Cl. 35; Tyler's Motion, 18 Id. 25; see *contra*, *People v. Duane*, 121 N. Y. 367, 373, 55 Hun, 315. This section imposes no penalty for the acceptance of an office by one who is engaged in the prosecution of claims against the United States, but a continuation of the prosecution after such acceptance would be a violation. 23 A. G. Op. 533. While a person who has entered into a contract with another to prosecute a claim against the United States and has subsequently accepted a position as United States minister cannot collect fees for his legal services, he can recover from his associate counsel any fees advanced for his benefit. *Fox v. Willis*, 114 Ky. 940, 945, 24 Ky. Law Rep. Pt. 2, 1773. This section does not prevent an executive officer from contracting directly with the government in a matter outside of his duties. 14 A. G. Op. 482.

Officers interested in claims against United States

SECTION 110. Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, directly or indirectly, ask, accept, receive, or agree to receive, any money, property, or other valuable consideration, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to him or to any person with his consent, connivance, or concurrence, for his attention to, or services, or with the intent to have his action, vote, or decision influenced, on any question, matter, cause, or proceeding, which may at any time be pending in either House of Congress or before any committee thereof, or which by law or under the

Accepting, etc., bribe by Member of Congress

**Accepting,  
etc., bribe  
by Member  
of Congress**

Constitution may be brought before him in his official capacity, or in his place as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place, and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States.

This section is taken from U. S. Rev. Sts. §§ 1781, 5500, 5502, but is considerably enlarged so as to include members of Congress from election or appointment and before qualification and during continuance in office and to include resident commissioners. See also U. S. Rev. Sts. § 5450.

**Offering,  
etc., bribe  
to Member  
of Congress**

SECTION 111. Whoever shall promise, offer, or give, or cause to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value, to any Member of either House of Congress, or Delegate to Congress, or Resident Commissioner, after his election or appointment and either before or after he has qualified, and during his continuance in office, or to any person with his consent, connivance, or concurrence, with intent to influence his action, vote, or decision, on any question, matter, cause, or proceeding which may at any time be pending in either House of Congress, or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity or in his place as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount of money or value of the thing so promised, offered, given, made, or tendered, and imprisoned not more than three years.

This section is founded on U. S. Rev. Sts. § 5450, with changes similar to those in § 110 above.

Clark v. United States, 12 Ct. Cl. 597, 608; 17 A. G. Op. 419, 420.

**SECTION 112.** Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being an officer or agent of the United States, shall directly or indirectly take, receive, or agree to receive, from any person, any money, property, or other valuable consideration whatever, for procuring, or aiding to procure, any contract, appointive office, or place, from the United States or from any officer or department thereof, for any person whatever, or for giving any such contract, appointive office, or place to any person whomsoever; or whoever, directly or indirectly, shall offer, or agree to give, or shall give, or bestow, any money, property, or other valuable consideration whatever, for the procuring, or aiding to procure, any such contract, appointive office, or place, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States. Any such contract or agreement may, at the option of the President, be declared void.

**Member of Congress taking consideration for procuring contract, etc. Offering Member of Congress consideration to procure contract, etc.**

This section is taken from U. S. Rev. Sts. § 1781, with changes similar to those in § 110 above.

*Beavers v. Henkel*, 194 U. S. 73, 48 L. ed. 882; *Beavers v. Haubert*, 198 Id. 77, 78, 49 L. ed. 950; 17 A. G. Op. 419, 420. This section and § 113 make it illegal for an officer of the United States to have such connection with a government contract as an agent, attorney, or solicitor assumes when he procures or aids to procure such contract for another, or when he prosecutes for another against the government any claim founded upon a government contract. But they do not prohibit executive officers of the government from contracting directly with the government as principals in matters separate from their offices and the performance of their official duties, or being connected with or interested in such contracts after they are procured. 14 A. G. Op. 482; Id. 133; 24 Id. 557, 560. A clerk in one of the departments is an "officer" or "agent." *McGregor v. United States*, 134 F. R. 187. A non-



**Member of Congress taking consideration for procuring contract, etc. Offering Member of Congress consideration to procure contract, etc.**

negotiable promissory note given by a government contractor to a Member of Congress agreeing to pay a certain sum as the proceeds of a contract are received is not "property" or a "valuable consideration," as such note is void. *United States v. Driggs*, 125 F. R. 520. Under this section as it stood in Rev. Sts. § 1781 a senator elect was not a "Member of Congress" before he had qualified. *United States v. Dietrich*, 126 F. R. 676. Two persons cannot be indicted in the same count of one indictment, the one with offering to give and the other with offering to receive a bribe. *United States v. Dietrich*, 126 F. R. 664. Under Rev. Sts. § 1024 a count under this section may be joined with a count under § 113, and a count for conspiracy under § 37. *McGregor v. United States*, 134 F. R. 187.

**Receiving pay by Senator or Member of Congress in matters affecting United States**

SECTION 113. Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the head of a department, or other officer or clerk in the employ of the United States, shall, [*sic*] directly or indirectly, receive, or agree to receive, any compensation whatever for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.

This section is taken from U. S. Rev. Sts. § 1782, with changes similar to those in § 110 above.

See note to § 112. *Beavers v. Haubert*, 198 U. S. 77, 49 L. ed. 950; *Platt v. Beach*, 2 Ben. 303, 19 Fed. Cas. 836; *United States v. Driggs*, 125 F. R. 520; 14 A. G. Op. 133.

This section is constitutional. *Receiving and agreeing to receive* are two distinct offenses. *United States v. Burton*, 202 U. S. 344, 50 L. ed. 1057. The United States is "interested" in the enforcement of the statutes preventing the use of the mails for schemes to defraud. *Id.*, and see *Burton v. United States*, 196 U. S. 283, 49 L. ed. 482; *United States v. Burton*, 131 F. R. 552. As to the place where an agreement is made or money is paid, see *Id.*

**Receiving  
pay by  
Senator or  
Member of  
Congress in  
matters af-  
fecting  
United  
States**

An assistant attorney for the District of Columbia is not an "officer," in the employ of the government. 18 A. G. Op. 161. A Member of Congress is not an "officer." 17 A. G. Op. 420. This section applies to a receiver of a land office in respect to matters before, or which may come before, his own office. *United States v. Booth*, 148 F. R. 112. This does not prevent an executive officer from contracting as principal with the government in a matter outside of his department. 14 A. G. Op. 482; 24 *Id.* 457, 559.

A fine imposed hereunder is entirely penal, and if the defendant dies before it is paid or collected the cause abates and the fine cannot be collected from his estate. *United States v. Mitchell*, 163 F. R. 1014; *United States v. Dunne*, 173 *Id.* 254.

**SECTION 114.** Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement, made or entered into in behalf of the United States by any officer or person authorized to make contracts on its behalf, shall be fined not more than three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced by the United States, in consideration of any such contract or agreement, it shall forthwith be repaid;

**Member  
of Congress  
interested  
in public  
contracts**

**Member  
of Congress  
interested  
in public  
contracts**

and in case of failure or refusal to repay the same when demanded by the proper officer of the department under whose authority such contract or agreement shall have been made or entered into, suit shall at once be brought against the person so failing or refusing and his sureties, for the recovery of the money so advanced.

This section is the same as U. S. Rev. Sts. § 3739, with changes similar to those in § 110 above.

Burton v. United States, 202 U. S. 344, 366, 50 L. ed. 1057; 4 A. G. Op. 47; 15 Id. 280. This applies to a contract already made but in part executory when a person becomes a Member of Congress. United States v. Dietrich, 126 F. R. 671. But see 5 A. G. Op. 697. A Member of Congress cannot be employed as counsel to assist the district attorney. 2 A. G. Op. 38. A Member of Congress may be a surety on the bond of a contractor with the United States. 18 A. G. Op. 286. An agreement for the purchase of lands, etc., executed by an officer of the Reclamation Service is an agreement or contract within this section and §§ 115, 116. 26 A. G. Op. 537. Postal contracts with railroads need not contain an express reference to this section and § 116. 18 A. G. Op. 112. Executive officers are not prohibited from being principals in government contracts. 24 A. G. Op. 557. The provision for the return of money "*advanced*" does not apply to a completed contract. 25 A. G. Op. 71.

**Making  
official con-  
tract with  
Member of  
Congress**

SECTION 115. Whoever, being an officer of the United States, shall on behalf of the United States, directly or indirectly make or enter into any contract, bargain, or agreement, in writing or otherwise, with any Member of or Delegate to Congress, or any Resident Commissioner, after his election or appointment as such Member, Delegate, or Resident Commissioner, and either before or after he has qualified, and during his continuance in office, shall be fined not more than three thousand dollars.

This section is founded on U. S. Rev. Sts. § 3742, but, like preceding sections, is considerably enlarged. See note to § 114. 15 A. G. Op. 149, 151. While a partnership of which a Member of Congress forms part cannot contract with the government, it seems that, if the member expressly renounces his interest in the contract, it may be consummated with the other partners. 4 A. G. Op. 47.

**Making  
official con-  
tract with  
Member of  
Congress**

SECTION 116. Nothing contained in the two preceding sections shall extend, or be construed to extend, to any contract or agreement made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any Member of or Delegate to Congress, or Resident Commissioner, where the same are ready for delivery, and payment therefor is made, at the time of making or entering into the contract or agreement.

**Contracts  
not affected**

This section is the same as U. S. Rev. Sts. § 3740, except that the words "two preceding sections" are substituted for "preceding section" and "resident commissioner" is included. See notes to §§ 114, 115.

SECTION 117. Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof; or whoever, being an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, shall ask, accept, or receive any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of money or value of the thing so asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place and thereafter be forever disqualified from holding

**Official  
accepting  
bribe**

**Official  
accepting  
bribe**

any office of honor, trust, or profit under the Government of the United States.

This section is taken from U. S. Rev. Sts. §§ 5500, 5501, 5502.

*King v. United States*, 112 F. R. 988; *United States v. Ingham*, 97 Id. 935; *United States v. Boyer*, 85 Id. 425; 17 A. G. Op. 419, 420. An Indian agent is within the provisions of this section. *Sharp v. United States*, 138 F. R. 878. A member of a board of examining surgeons for pensions is a person acting in behalf of the United States. *United States v. Van Leuven*, 62 F. R. 62; *United States v. Kessel*, Id. 57.

**Political  
contribu-  
tions not to  
be solicited  
by officers  
named**

SECTION 118. No Senator or Representative in, or Delegate or Resident Commissioner to Congress, or Senator, Representative, Delegate, or Resident Commissioner elect, or officer or employee of either House of Congress, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

This section is the same as the Act of Jan. 16, 1883, c. 27, § 11, (22 St. 406), except that it is enlarged to include resident commissioners.

*United States v. Thayer*, 154 F. R. 508 (reversed, 209 U. S. 39, 52 L. ed. 673). This section is constitutional. See *Ex parte Curtis*, 106 U. S. 371, 27 L. ed. 232. It does not forbid voluntary contributions by employees to outside persons. 21 A. G. Op. 298. It includes all persons concerned in the transaction. *United States v. Riley*, 74 F. R.

210; *United States v. Scott*, Id. 213. A circular letter by a political committee to Federal officers soliciting financial aid which contains the names of Federal officers or employees is a violation hereof. 24 A. G. Op. 133.

Political contributions not to be solicited by officers named

SECTION 119. No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in the preceding section, or in any navy-yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purpose whatever.

Political contributions not to be received in public offices

This section is the same as the Act of Jan. 16, 1883, c. 27, § 12 (22 St. 407). This is constitutional. *Ex parte Curtis*, 106 U. S. 371, 27 L. ed. 232; *United States v. Newton*, 20 Dist. of Col. 226. This does not apply to money paid by a disbursing officer on the order of an employee where the officer had no connection with any soliciting, although he knew the money was paid for political purposes. It does not apply to a voluntary contribution by an employee. 21 A. G. Op. 298. Where the solicitation is made by letter, the offense occurs where the letter is received and read. *United States v. Thayer*, 209 U. S. 39, 52 L. ed. 673, reversing 154 F. R. 508; see also *United States v. Smith*, 163 F. R. 926.

SECTION 120. No officer or employee of the United States mentioned in section one hundred and eighteen, shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

Immunity from official proscription, etc.

This section is the same as the Act of Jan. 16, 1883, c. 27, § 13 (22 St. 407). Except as here limited, the power of removal is unrestricted by legislation. *United States v. Taft*, 24 App. D. C. 95, 203 U. S. 461, 51 L. ed. 269; *Morgan v. Nunn*, 84 F. R. 551.

**Making  
political  
contribu-  
tions to  
officials**

SECTION 121. No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

This section is the same as the Act of Jan. 16, 1883, c. 27, § 14, (22 St. 407) except that resident commissioners are included.

**Punish-  
ment for  
violations**

SECTION 122. Whoever shall violate any provision of the four preceding sections shall be fined not more than five thousand dollars, or imprisoned not more than three years, or both.

This section is the same as the Act of Jan. 16, 1883, c. 27, § 15 (22 St. 407).

United States v. Thayer, 209 U. S. 39, 42, 52 L. ed. 673.

**Officials,  
etc., giving  
advance in-  
formation  
of crop  
reports**

SECTION 123. Whoever, being an officer or employee of the United States or a person acting for or on behalf of the United States in any capacity under or by virtue of the authority of any department or office thereof, and while holding such office, employment, or position shall, by virtue of the office, employment, or position held by him, become possessed of any information which might exert an influence upon or affect the market value of any product of the soil grown within the United States, which information is by law or by the rules of the department or office required to be withheld from publication until a fixed time, and shall willfully impart, directly or indirectly, such information, or any part thereof, to any person not entitled under the law or the rules of the department or office to receive the same; or shall, before such information is made public through regular official channels, directly or indirectly speculate in any such product respecting which he has thus become possessed of such information, by buying or selling the same in any quantity, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both: *Provided*, that no person shall be deemed guilty of a violation of any such rule, unless prior to

such alleged violation he shall have had actual knowledge thereof.

Officials,  
etc., giving  
advance in-  
formation  
of crop  
reports

This section is new. Prior to the passage of this section it would appear that the giving of advance information did not constitute an offense. *United States v. Haas*, 167 F. R. 211, 215, and see notes to § 37.

SECTION 124. Whoever, being an officer or employee of the United States and whose duties require the compilation of report of statistics or information relative to the products of the soil, shall knowingly compile for issuance, or issue, any false statistics or information as a report of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Official  
knowingly  
issuing  
false crop  
reports

This section is new.



## CHAPTER SIX

## OFFENSES AGAINST PUBLIC JUSTICE

## SECTION

- 125. Perjury
- 126. Subornation of perjury
- 127. Stealing or altering process; procuring false bail, etc.
- 128. Destroying, etc., public records
- 129. Destroying records by officer in charge
- 130. Forging signature of judge, etc.
- 131. Bribery of a judge or judicial officer
- 132. Judge or judicial officer accepting a bribe, etc.
- 133. Juror, referee, master, etc., or judicial officer, etc., accepting bribe
- 134. Witness accepting bribe
- 135. Intimidation or corruption

## SECTION

- of witness, or grand or petit juror, or officer
- 136. Conspiring to intimidate party, witness, or juror
- 137. Attempting to influence juror
- 138. Allowing prisoner to escape
- 139. Application of preceding section
- 140. Obstructing process or assaulting an officer
- 141. Rescuing, etc., prisoner; concealing, etc., person for whom warrant has issued
- 142. Rescue at execution
- 143. Rescue of prisoner
- 144. Rescue of body of executed offender
- 145. Extortion by informer
- 146. Misprision of felony

**Perjury defined**

SECTION 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

This section is the same as U. S. Rev. Sts. § 5392, except that the last sentence, "and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed," is omitted.

See note to § 326. *United States v. Passmore*, 4 Dall.

372, 1 L. ed. 871; Anonymous, 1 Wash. (U. S.) 84; *United States v. Barber*, 140 U. S. 177, 35 L. ed. 398; *Logan v. United States*, 144 Id. 263, 302, 36 L. ed. 429; *New York v. Eno*, 155 Id. 89, 97, 39 L. ed. 80; *Todd v. United States*, 158 Id. 278, 284, 39 L. ed. 982; *Bucklin v. United States*, 159 Id. 680, 682, 40 L. ed. 304; *Markham v. United States*, 160 Id. 319, 323, 40 L. ed. 441; *United States v. Burkhardt*, 31 F. R. 141; *United States v. Cuddy*, 39 Id. 696; *United States v. Wood*, 44 Id. 753; *United States v. Wallace*, 46 Id. 569; *United States v. Bedgood*, 49 Id. 54; *In re Christian*, 82 Id. 199; *United States v. Pettus*, 84 Id. 791; *United States v. Brace*, 149 Id. 869, 874; *Sullivan v. United States*, 161 Id. 253; *Barnard v. United States*, 162 Id. 618; *London v. United States*, 171 Id. 82; *People v. Turner*, 122 Cal. 679, 680. As to the extension of this section to Oklahoma, see Act of May 2, 1890, c. 182 (26 St. 81, 97). As to the effect of § 29 of the Bankruptcy Act on this section, see *Wechsler v. United States*, 158 F. R. 579.

**Perjury  
defined**

The provisions of this section were extended by § 6 of Act of June 14, 1878 (20 St. 113), ch. 190, to that Act which amends the Act of 1873 (17 St. 605), now Rev. Sts. §§ 2317, 2464, 2468, "to encourage the growth of timber on the Western prairies." Sects. 5392, 5393 were new general provisions recommended by the Revisers to take the place of the numerous provisions affixing the pains and penalties of perjury anew every time an oath is required in any statute to be taken before either a judicial or administrative officer. 2 Com. D. 2583.

Prosecutions for false swearing may be sustained in the Federal courts against persons who shall have made false affidavits or affirmations before judicial officers of the United States or State officers generally authorized to administer oaths for the purpose of supporting claims, although the particular law under which the claims are made are silent on the subject. 2 A. G. Op. 700. Perjury may be com-

**Perjury  
defined**

mitted either by swearing to a fact which the witness knows is not true, or by swearing to his knowledge of the fact when he knows that he has no such knowledge. *United States v. Atkins*, 1 Sprague, 558; *United States v. Jones*, 14 Blatch. 90, 26 Fed. Cas. 638. It is committed where the clerk of the circuit or district court makes false statements in his emolument returns and accounts for services rendered (*United States v. Ambrose*, 2 F. R. 556, 108 U. S. 336, 27 L. ed. 746); where an oath is made before the county clerk, as provided in Rev. Sts. § 2294, which is willfully and knowingly false in a material particular, or where it includes a statement which the affiant did not believe (*United States v. Hearing*, 11 Sawyer, 514, 26 F. R. 744); where a false oath is taken as to a pension claim before a justice of the peace (*United States v. Boggs*, 31 Id. 337); where one intentionally swore falsely in making return of his income, although the statute imposing a tax upon incomes did not provide for a compulsory disclosure under oath (*United States v. Smith*, 1 Sawyer, 277); where one intentionally omits to place a part of his property on a schedule in an application under the bankrupt Act (*United States v. Nichols*, 4 McLean, 23); where one testifies falsely to the credibility of a witness, such credibility being material, or where one testifies that he has never been in prison, the fact being otherwise (*United States v. Landsberg*, 21 Blatch. 169, 23 F. R. 585, 15 Rep. 42); where statements which the deponent does not believe to be true are made on a justification as bail. *United States v. Volz*, 14 Blatch. 15, 28 Fed. Cas. 384. Perjury committed on an examination before a United States commissioner, under an Act of Congress, is within this section. *Ex parte Bridges*, 2 Woods, 428, 4 Fed. Cas. 99. An indictment for perjury could not be sustained under the Act of 1790 for a false oath made on a hearing on a criminal complaint before a district judge of the United States. *United States v. Clark*, 1 Gall. 497. A prosecution for a

false oath before a commissioner in bankruptcy was barred by the repeal of the bankruptcy law. *United States v. Passmore*, 4 Dall. 372, 1 L. ed. 871; *Anon.* 1 Wash. C. C. 84. To constitute perjury an oath must be taken under or required by some law of the United States. A voluntary or extra-judicial oath, though false, is not perjury: *United States v. Babcock*, 4 McLean, 113, 24 Fed. Cas. 928; *United States v. Law*, 50 F. R. 915; neither is an oath taken under a departmental regulation for the enforcement of the oleomargarine law: *United States v. Lamson*, 165 F. R. 80; nor one as to non-mineral character of homestead lands under Rev. Sts. § 2290: *United States v. Maid*, 116 F. R. 650; see *Robnett v. United States*, 169 Id. 778; *Dwyer v. United States*, 170 Id. 160; nor one as to the distance traveled by a witness. *United States v. Howard*, 37 F. R. 666. But where the departmental rules requiring the affidavit are in accord with the requirements of the statute, a false affidavit constitutes perjury. *Van Gesner v. United States*, 153 F. R. 46. It is not necessary that the proceeding in which the oath is taken should be a judicial proceeding. *United States v. Hardison*, 135 F. R. 419.

**Perjury defined**

Before the Act of Feb. 26, 1881, ch. 82 (see note, § 5211), a notary public had no authority under the laws of the United States to administer an oath to an officer of a national bank in verification of his report made under Rev. Sts. § 5211. *United States v. Curtis*, 107 U. S. 671, 27 L. ed. 534. The words "competent tribunal, officer, or person" do not necessarily mean that the tribunal by which the oath is administered shall have been created by the government which required it to be taken, nor that the officer who administers it shall be an officer of that government. *Id.*; *United States v. Hardison*, 135 F. R. 419. But the statute means that the oath must, at any rate, be permitted or required by the laws of the United States, and be administered by some tribunal, officer, or person authorized by such laws to administer

**Perjury  
defined**

oaths in respect of the particular matters to which it relates. *United States v. Curtis*, 107 U. S. 671, 27 L. ed. 534; *United States v. Howard*, 37 F. R. 666. By St. June 14, 1878, ch. 190, § 2 (see note at beginning of this section), it was provided that a person applying for the benefit thereof shall make an affidavit before designated officers, or the clerk of some court of record, or officer authorized to administer oaths in the district where the land is situated. This was construed to mean an officer authorized to administer oaths in such district, either by the law of the State or of the United States, and rendered any State officer competent to administer it if authorized by State law. *United States v. Madison*, 21 F. R. 628. A county clerk authorized to administer oaths to persons resident in his county has no authority to administer them to persons not resident therein. *United States v. Deming*, 4 McLean, 3, 25 Fed. Cas. 816. The court takes judicial notice of the qualifications of Federal officers to administer oaths. *Babcock v. United States*, 34 F. R. 873. A deputy clerk has authority to administer oaths in bankruptcy. *United States v. Nichols*, 4 McLean, 23. The oath is complete so far as the affiant can make it, when it is taken and subscribed; and if the notary in making a certificate uses the word "county" instead of "city" and another seal instead of his notarial seal, the validity of the oath is not affected. *United States v. Neale*, 14 F. R. 767; *United States v. Baer*, 18 Blatch. 493, 6 F. R. 42, 11 Repr. 182. The authority of the officer who administers the oath upon which perjury is predicated is sufficiently alleged by stating that said officer was then and there a person having authority to administer said oath. *United States v. Boggs*, 31 F. R. 337. A notary public is authorized to administer oaths in affidavits required by the Secretary of War under St. March 3, 1863, and false swearing in reference to facts so required is perjury. *United States v. Sonachall*, 4 Biss. 425, 27 Fed. Cas. 1259.

This section applies throughout the United States. *Caha v. United States*, 152 U. S. 211, 38 L. ed. 415. It applies to regulations of the Land Department for the disposition of public lands, and to contests in cases of such disposition. *Id.*; *In re Kollock*, 165 U. S. 526, 533, 41 L. ed. 813. See *United States v. Manion*, 44 F. R. 800; *United States v. Eaton*, 144 U. S. 677, 36 L. ed. 591. It includes a false oath taken before a land register or receiver in a matter of which he has jurisdiction. *Peters v. United States*, 2 Okl. 116; *Rich v. United States*, *Id.* 146; *Finch v. United States*, 1 *Id.* 396. It applies to an oath taken by an entryman on public lands that he entered the land for his individual use and not for speculation, when he in fact intended to transfer it to another immediately under a pre-existing contract. *Nickell v. United States*, 161 F. R. 702. A false oath under the Civil Service law that the applicant had never been in the government employ is perjury. *Johnson v. United States*, 26 App. D. C. 128, 131.

Perjury  
defined

The usual and ordinary meaning of the word "deposition" is written testimony in legal proceedings. *United States v. Clark*, 1 Gall. 497, 25 Fed. Cas. 441. The words "declaration" and "certificate" are used in the ordinary and popular sense, and signify any statement of material matters of fact sworn to and signed by the party charged. *United States v. Ambrose*, 108 U. S. 336, 27 L. ed. 746. The oath of the cashier of a national bank to a report made to the Comptroller of the Currency, as required by Rev. Sts. § 5211, is a declaration within this section. *United States v. Bartow*, 10 F. R. 873.

The indictment need not allege that the false oath was taken deliberately and corruptly, or otherwise than as indicated by the language of the statute. But the oath must be willfully taken. *United States v. Edwards*, 43 F. R. 67; *United States v. Lake*, 129 *Id.* 499. And the fact that the accused was sworn must be distinctly stated. It need not

**Perjury  
defined**

appear from the indictment that the magistrate made a jurat or memorandum on the affidavit, stating when and where the defendant swore to it. An allegation that the defendant "did depose and swear" to the truth of a deposition set out, does not sufficiently show that he was sworn. *United States v. McConaughy*, 33 F. R. 168; *United States v. Hearing*, 11 Sawyer, 514, 26 F. R. 744. An averment in the indictment that the report was "made to the Comptroller of the Currency, and verified as aforesaid as by law required," is a sufficient averment after verdict to warrant judgment on a conviction. *United States v. Bartow*, 10 F. R. 873.

There can be no conviction for perjury, unless the false oath or affidavit was taken, or made with a corrupt intent, and this is a question for the jury. *United States v. Smith*, 1 Sawyer, 277, 27 Fed. Cas. 1175. Where a bankrupt submitted the fact in regard to his property fairly to his counsel for advice, and, acting thereon, withheld certain items from his schedule, the fraudulent intent required to constitute the crime of perjury was wanting. *United States v. Conner*, 3 McLean, 573, 25 Fed. Cas. 595. But an intent to defraud the government is not a necessary element in perjury under the statutes relating to fishing bounties. *United States v. Atkins*, 1 Sprague, 558. It is probably immaterial whether the oath was *subscribed* in the presence of the magistrate. *Nurnberger v. United States*, 156 F. R. 721. It is not necessary that the false affidavit should have been used. *Noah v. United States*, 128 F. R. 270; *United States v. Rhodes*, 30 Id. 431. The indictment must set forth the substance of the offense. *Dunbar v. United States*, 156 U. S. 185, 192, 39 L. ed. 390; *Markham v. United States*, 160 Id. 319, 326, 40 L. ed. 441. See also *United States v. Nickerson*, 17 How. 204, 15 L. ed. 219. The materiality of the false statement must be alleged. *United States v. Singleton*, 54 F. R. 488, and see *United States v. Maid*, 116 Id. 650. The unsupported testimony of a single witness is insufficient

to convict. *United States v. Hall*, 44 F. R. 864. But oral evidence is unnecessary if the jury believe documentary evidence. *United States v. Wood*, 14 Pet. 430, 10 L. ed. 527. See *People v. Doody*, 72 N. Y. App. Div. 372, 383.

**Perjury defined**

A false oath taken before a Federal court in a case there pending is not indictable in a State court. *In re Loney*, 134 U. S. 372, 374, 33 L. ed. 949. *State v. Shelley*, 11 Lea (Tenn.), 594; *Brown v. United States*, 2 Am. L. T. N. s. 464. Under the former provision of this section it was necessary that the sentence should include the element of hard labor. *In re Johnson*, 46 F. R. 477, 481. The provision making persons violating this section incapable of giving testimony applied only to those convicted. *O'Leary v. United States*, 158 F. R. 796. It applied to all cases in the Federal courts, regardless of State laws. *Wise v. Williams*, 162 F. R. 161.

For perjury committed under the Acts of March 1, 1823, and March 3, 1825, see *United States v. Bailey*, 9 Pet. 238, 9 L. ed. 113; *United States v. Moore*, 2 Lowell, 232; under St. 1813, ch. 34, §§ 7, 9, see *United States v. Kendrick*, 2 Mason, 69, 26 Fed. Cas. 758. See also *United States v. Shinn*, 14 F. R. 447; *Babcock v. United States*, 34 Id. 873; *United States v. Stanley*, 6 McLean, 409; *United States v. Dickey*, *Morris (Iowa)*, \*412.

SECTION 126. Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.

**Subornation of perjury**

This section is the same as U. S. Rev. Sts. § 5393. See note to § 125. *United States v. Barber*, 140 U. S. 177, 178, 35 L. ed. 398; *Logan v. United States*, 144 Id. 263, 302, 36 L. ed. 429; *United States v. Cobban*, 134 F. R. 290; *United States v. Brace*, 149 Id. 869, 874; *Nickell v. United States*, 161 Id. 702, 707, affirmed 167 Id. 741; *People v. Ross*, 103 Cal. 425. As to the form of an indictment, see *United States v. Howard*, 132 F. R. 325. To constitute a good indictment for



**Suborna-  
tion of  
perjury**

subornation of perjury the false swearing must be set out with the same detail as on an indictment for perjury, and the indictment must charge that the defendant procured the witness to testify knowing that the testimony would be false, and knowing that the witness knew that the testimony he had given, or was about to give, was false, and knowing that he would corruptly and willfully give false testimony. *United States v. Dennee*, 3 Woods, 39, 25 Fed. Cas. 817; *United States v. Wilcox*, 4 Blatch. 393, 28 Fed. Cas. 600; *United States v. Evans*, 19 F. R. 912. The indictment should also show that the oath was required under some law of the United States. *United States v. Wilcox*, *supra*. In an indictment under this section for procuring the commission of perjury in support of an application for land under the timber culture law, alleging that the defendant knew that the person who made the application did not make it for his own use and benefit, but for that of the defendant, and that the former did not intend to cultivate the land, it was held after verdict that this was equivalent to alleging that the defendant knew or believed that such person took the oath, knowing it to be false. *United States v. Thompson*, 31 F. R. 331; see *Babcock v. United States*, 34 Id. 873.

**Stealing or  
altering  
process;  
procuring  
false bail,  
etc.**

SECTION 127. Whoever shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceeding, in any court of the United States, by means whereof any judgment is reversed, made void, or does not take effect; or whoever shall acknowledge, or procure to be acknowledged, in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than five thousand dollars, or imprisoned not more than seven years, or both; but this provision shall not extend to the acknowledgment of any judgment by an attorney, duly admitted, for any person against whom such judgment is had or given.

This section is the same as U. S. Rev. Sts. § 5394, except that the words "or both" are inserted after "seven years."

*United States v. Crecilius*, 34 F. R. 30; *Barber v. United States*, 35 Id. 886; 5 A. G. Op. 523.

SECTION 128. Whoever shall willfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy, or, with intent to conceal, remove, mutilate, obliterate, destroy, or steal, shall take and carry away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer or any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both.

Destroying,  
etc., public  
records

This section is taken from U. S. Rev. Sts. § 5403, and is considerably enlarged.

Ayers *v.* Covill, 18 Barb. 260; People *v.* Wise, 2 How. Prac. N. S. 92; Martin *v.* United States, 168 F. R. 198. This applies to all records in a case. McInerney *v.* United States, 143 F. R. 729. It is an essential element of the offense that there be a specific intent to destroy or steal the papers *as records* of a public office. The statute is not broad enough to cover the mere larceny of such papers or documents. The offense may be committed by taking the records from any place whatever, no matter how private or unusual the place where they are found. United States *v.* De Groat, 30 F. R. 764; Mackin *v.* United States, 23 Id. 334; *Ex parte* Perkins, 29 Id. 900, 912; United States *v.* Goldberg, 7 Biss. 175, 178, 25 Fed. Cas. 1342.

SECTION 129. Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in the preceding section, shall willfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both; and shall moreover forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States.

Destroying  
records by  
officer in  
charge

This section is taken from U. S. Rev. Sts. § 5408, and is considerably enlarged.

**Destroying  
records by  
officer in  
charge**

A clerk employed by the commissioner to the Five Civilized Tribes is not an "*officer*." A withdrawal of a public record at other than office hours for the purpose of copying is not a violation hereof. *Martin v. United States*, 168 F. R. 198.

**Forging  
signature  
of judge,  
etc.**

SECTION 130. Whoever shall forge the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or shall forge or counterfeit the seal of any such court, or shall knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined not more than five thousand dollars and imprisoned not more than five years.

This section is the same as U. S. Rev. Sts. § 5419, except a slight change in the punishment.

*Ex parte Parks*, 93 U. S. 18, 23 L. ed. 787; *In re Parks*, 9 Nat. Bank. Reg. 270, 18 Fed. Cas. 1218.

**Bribery of  
judicial  
officer**

SECTION 131. Whoever, directly or indirectly, shall give or offer, or cause to be given or offered, any money, property, or value of any kind, or any promise or agreement therefor, or any other bribe, to any judge, judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereon, or because of any such action, vote, opinion, or decision, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall forever be disqualified to hold any office of honor, trust, or profit under the United States.

This section is founded on U. S. Rev. Sts. § 5449. There is a change in phraseology and in the punishment.

**Judicial  
officer  
accepting  
bribe**

SECTION 132. Whoever, being a judge of the United States, shall in anywise accept or receive any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift, or security for the payment of money, or for the delivery or conveyance of anything of value, with the intent

to be influenced thereby in any opinion, judgment, or decree in any suit, controversy, matter, or cause depending before him, or because of any such opinion, ruling, decision, judgment, or decree, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall be forever disqualified to hold any office of honor, trust, or profit under the United States.

**Judicial  
officer  
accepting  
bribe**

This section is taken from U. S. Rev. Sts. § 5499. Near the end of the section the words "or because of any such opinion, ruling, decision, judgment, or decree" are inserted, and there is a change in the punishment.

SECTION 133. Whoever, being a juror, referee, arbitrator, appraiser, assessor, auditor, master, receiver, United States commissioner, or other person authorized by any law of the United States to hear or determine any question, matter, cause, controversy, or proceeding, shall ask, receive, or agree to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment, or decision shall be influenced thereby, or because of any such vote, opinion, action, judgment, or decision, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

**Juror,  
referee,  
etc., ac-  
cepting  
bribe**

This section is new.

SECTION 134. Whoever, being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized by the laws of the United States to hear evidence or take testimony, shall receive, or agree or offer to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, or because of such testimony, or such absence, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

**Witness  
accepting  
bribe**

This section is new.

SECTION 135. Whoever corruptly, or by threats or force, or by any threatening letter or communication, shall endeavor to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or officer acting as such commissioner, or any grand or petit

**Attempting  
to influence  
witness,  
juror, or  
officer**

Attempting  
to influence  
witness,  
juror, or  
officer

juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or officer acting as such commissioner, in the discharge of his duty, or who corruptly or by threats or force, or by any threatening letter or communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice therein, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

This section is taken from U. S. Rev. Sts. §§ 5399, 5404. It is enlarged so as to include a United States commissioner or an officer acting as such. *United States v. Memphis R. Co.*, 6 F. R. 237, 240; *United States v. Kilpatrick*, 16 Id. 765; *United States v. Polite*, 35 Id. 58; *United States v. Kee*, 39 Id. 603; *United States v. Terry*, 41 Id. 771, 773; *United States v. Armstrong*, 59 Id. 568; *United States v. Johnston*, 87 Id. 187; *McCaully v. United States*, 25 App. D. C. 410. It is necessary that the person accused of violating this section knew that the witness had been designated as a witness. *United States v. Bittinger*, 15 Am. L. Reg. N. s. 49. The indictment for obstructing justice must show that the accused knew of the pendency of the proceedings in the Federal court. *Pettibone v. United States*, 148 U. S. 197, 204, 37 L. ed. 419. The obstruction of justice is included more than the intimidation of witnesses and officers. *Wilder v. United States*, 143 F. R. 433; see *United States v. Bittinger*, *supra*. Drawing a pistol and threatening the life of counsel during the examination of witnesses before an examiner in chancery appointed by a circuit court, in a suit pending therein, is an offense under this section. *Sharon v. Hill*, 24 F. R. 726. But taking away a vessel by its owner after it has been attached by the marshal but while it is not in the custody of the keeper is not. *United States v. Seeley*, 27 Fed. Cas. 1010.

This section does not apply to acts committed long after

the termination of the suit. *United States v. McLeod*, 119 F. R. 416; *United States v. Thomas*, 47 Id. 807. Contempts may be punished under this section or under Rev. Sts. § 725. Savin, petitioner, 131 U. S. 267, 33 L. ed. 150; *In re Neagle*, 39 F. R. 833, 858, 135 U. S. 1, 63, 34 L. ed. 55; *In re Brule*, 71 F. R. 943; *Ex parte McLeod*, 120 Id. 130.

Attempting to influence witness, juror, or officer

SECTION 136. If two or more persons conspire to deter by force, intimidation, or threat, any party or witness in any court of the United States, or in any examination before a United States commissioner or officer acting as such commissioner, from attending such court or examination, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

Conspiring to intimidate party, witness, or juror

This section is founded on U. S. Rev. Sts. § 5406. The words "in any State or Territory" are omitted, and the section is enlarged so as to extend to examinations "before a United States commissioner, or officer acting as such commissioner." *United States v. Sanges*, 48 F. R. 78, 83; *United States v. McLeod*, 119 Id. 416. The decision in *Todd v. United States*, 158 U. S. 278, 282, 39 L. ed. 982, that under Rev. Sts. § 5406, a preliminary examination before a commissioner was not a proceeding "in any court of the United States," probably led to the present form of this section.

SECTION 137. Whoever shall attempt to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any letter or any communication, in print or writing, in relation to such issue or matter, shall be fined not more than one

Attempting to influence juror by writing

**Attempting to influence juror by writing** thousand dollars, or imprisoned not more than six months, or both.

This section is taken from U. S. Rev. Sts. § 5405. In the early part of the section the words "of any court of the United States" are inserted, and towards the end of the section the words "without the order previously obtained of the court before which the juror is summoned" are omitted. *United States v. Kilpatrick*, 16 F. R. 765.

**Allowing prisoner to escape** SECTION 138. Whenever any marshal, deputy marshal, ministerial officer, or other person has in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, and such marshal, deputy marshal, ministerial officer, or other person voluntarily suffers such prisoner to escape, he shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

This section is the same as U. S. Rev. Sts. § 5409.

**Application of provisions** SECTION 139. The preceding section shall be construed to apply not only to cases in which the prisoner who escaped was charged or found guilty of an offense against the laws of the United States, and to cases in which the prisoner may be in custody charged with offenses against any foreign government with which the United States have treaties of extradition, but also to cases in which the prisoner may be held in custody for removal to or from the Philippine Islands as provided by law.

This section is founded on U. S. Rev. Sts. § 5410, and the Act of Feb. 6, 1905, c. 454, § 2 (33 St. 698).

**Obstructing process or assaulting officer** SECTION 140. Whoever shall knowingly and willfully obstruct, resist, or oppose any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any mesne process or warrant, or any rule or order, or any other legal or judicial writ or process of any court of the United States, or United States commissioner, or shall assault, beat, or wound any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ

or process, shall be fined not more than three hundred dollars and imprisoned not more than one year.

**Obstructing  
process or  
assaulting  
officer**

This section is taken from U. S. Rev. Sts. § 5398, but is enlarged. *Pettibone v. United States*, 148 U. S. 197, 205, 37 L. ed. 419; *United States v. Mundell*, 1 Hughes, 415, 27 Fed. Cas. 23; *Charge to Grand Jury*, 2 Curt. 637, 30 Fed. Cas. 983; *Charge to Grand Jury*, 2 Blatch. 359, 30 Fed. Cas. 1013; *Charge to Grand Jury*, 1 Sprague, 593, 30 Fed. Cas. 1015; *Matthews v. United States*, 32 Ct. Cl. 123, 129; *United States v. Buck*, 4 Phil. 161, 17 Leg. Int. 181; *United States v. Bachelder*, 2 Gall. 15, 24 Fed. Cas. 931; *United States v. Huff*, 13 F. R. 630, 639. "Willfully" means something more than intentionally. It implies an evil intent without justifiable excuse. *United States v. McDonald*, 8 Biss. 439, 26 Fed. Cas. 1074. It is a violation of this section for any one to obstruct or resist the order of a circuit court commissioner engaged in the examination of an Indian charged before him with the murder of a white man upon the Umatilla reservation. *United States v. Martin*, 14 F. R. 817, 8 Sawyer, 473. So, if one, being served with a warrant, and required thereby to accompany the officer who makes the service, says he will not go, and does not go. *United States v. Lukins*, 3 Wash. C. C. 335, 26 Fed. Cas. 1011. So, although a mere threat to resist the execution of a writ does not constitute the offense, yet if when the officer proceeds to the execution of his process against property, a threat is used by the person in possession, accompanied by the exercise of force, or there are evidences of his capacity to employ force, and the officer does not perform his duty, the offense is complete. *United States v. Lowry*, 2 Wash. C. C. 169, 26 Fed. Cas. 1008. Resisting an officer in an attempt to execute process is as much an offense as resisting or obstructing him in an attempt to serve process. The offense is committed by resisting or obstructing an officer holding attached property after seizure. So also where resistance is made to a special custodian of such property who



**Obstructing  
process or  
assaulting  
officer**

is employed by a United States marshal, although such custodian is not a sworn deputy. So also if an officer, who, holding a writ of attachment, in good faith attaches the property of B, having reasonable grounds to believe that it belongs to A, is resisted or obstructed by B. *Aliter* if the officer acts in bad faith. *United States v. McDonald*, 8 Biss. 439. If a client and his attorney enter into a conspiracy to resist an officer in the performance of his duties, both are guilty. Threats and acts intended to terrify, or calculated to have that effect on a prudent and reasonable officer, are enough, though they do not hinder him from executing his process. *United States v. Smith*, 1 Dillon, 212, 27 Fed. Cas. 1161. It is no offense to obstruct or resist an officer who is acting without, or in excess of, his authority (*United States v. Fears*, 3 Woods, 510, 25 Fed. Cas. 1053); as if he attempts to execute a writ of *habere facias possessionem* after the return day. *United States v. Slaymaker*, 4 Wash. C. C. 169, 27 Fed. Cas. 1127. It is no defense to an indictment for forcibly obstructing or impeding an officer of customs in the discharge of his duties that the object of the defendant was personal chastisement, if he knew the officer to be engaged in the discharge of his duties. *United States v. Keen*, 5 Mason, 453, 26 Fed. Cas. 693.

A deputy marshal of the United States is an officer of the United States within this section to serve process. *United States v. Tinklepaugh*, 3 Blatch. 425, 28 Fed. Cas. 193; *United States v. Martin*, 17 F. R. 150. And so is the keeper of a State jail to whose custody a person is committed by legal process issued by a Federal court or judicial officer. *United States v. Martin*, 17 F. R. 150. The production of the commission of a deputy marshal, and proof that he was in the performance of the duties of his office, raises a presumption that he had been sworn as required, and authorizes a finding to that effect in the absence of other proof. *United States v. Hudson*, 1 Haskell, 527, 26 Fed. Cas. 406.

This section includes every species of legal process, whether issued by the court in session or by a judge or magistrate acting in that capacity out of court in the execution of the laws of the United States. *United States v. Lukins*, 3 Wash. C. C. 335. If a warrant is legal so far as the marshal and those who act under him are concerned, it is to be obeyed by everybody, and no one has a right to resist it. *United States v. Tinklepaugh*, *supra*. See further, as to legal process, *United States v. Martin*, *supra*.

**Obstructing  
process or  
assaulting  
officer**

An indictment must distinctly state and charge the following facts: (1) That a legal process, warrant, writ, rule, or order was issued by a court of the United States; (2) that such legal process, &c., after the same was issued, was in the hands of some officer of the United States for service who had authority by the laws thereof to serve the same; (3) that after such legal process, &c., was in the hands of such officer for service, some one knowingly and willfully obstructed, resisted, or opposed him in serving or attempting to serve or execute the same. *United States v. Tinklepaugh*, *supra*. It must be averred that the process which the defendant resisted was legal. A commissioner empowered to issue process, under 9 St. 462, must be such an one as is particularly described therein, and an averment that the warrant resisted was issued by a commissioner is not good. The facts constituting the due issue must be recited. The absence of an averment showing that the commissioner who issued the warrant was thereto authorized cannot be aided by referring to the court records. *United States v. Stowell*, 2 Curtis, 153, 27 Fed. Cas. 1350. As to the manner of resistance, it is enough to aver that the defendant did knowingly, willfully, and unlawfully obstruct, resist, and oppose the officer. When the description of the execution which the officer was attempting to serve shows that it was in force, an averment to that effect is unnecessary. The process need not be set out. *United States v. Hudson*, *supra*. A State judge who in bad faith and without authority releases

**Obstructing  
process or  
assaulting  
officer**

a United States prisoner on *habeas corpus* violates this section. *United States v. Doss*, 11 Am. Leg. Reg. N. S. 320, 25 Fed. Cas. 891. Taking deserters from a deputy marshal while he is acting as agent for a British consul is no offense hereunder. *United States v. Kelly*, 108 F. R. 538.

**Rescuing,  
etc., pris-  
oner; con-  
cealing  
person  
from arrest**

SECTION 141. Whoever shall rescue or attempt to rescue, from the custody of any officer or person lawfully assisting him, any person arrested upon a warrant or other process issued under the provisions of any law of the United States, or shall, directly or indirectly, aid, abet, or assist any person so arrested to escape from the custody of such officer or other person, or shall harbor or conceal any person for whose arrest a warrant or process has been so issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both.

This section is taken from U. S. Rev. Sts. § 5516, but is greatly enlarged.

**Rescue at  
executions**

SECTION 142. Whoever, by force, shall set at liberty or rescue any person found guilty in any court of the United States of any capital crime, while going to execution or during execution, shall be fined not more than twenty-five thousand dollars and imprisoned not more than twenty-five years.

This section is taken from U. S. Rev. Sts. § 5400. The words "in any court of the United States" are inserted, and the death penalty is changed to a fine and imprisonment.

**Rescue of  
prisoner**

SECTION 143. Whoever, by force, shall set at liberty or rescue any person who, before conviction, stands committed for any capital crime; or whoever, by force, shall set at liberty or rescue any person committed for or convicted of any offense other than capital, shall be fined not more than five hundred dollars and imprisoned not more than one year.

This section is the same as U. S. Rev. Sts. § 5401, except that the words "against the United States" are omitted.

It was held an offense within this section to rescue and set at liberty an Indian woman arrested by the Indian police on

the Umatilla reservation on a charge of adultery, and committed to jail for trial before the "court of Indian offenses." **Rescue of prisoner**  
 United States v. Clapox, 35 F. R. 575.

SECTION 144. Whoever, by force, shall rescue or attempt to rescue, from the custody of any marshal or his officers, the dead body of an executed offender, while it is being conveyed to a place of dissection, as provided by section three hundred and thirty-one hereof, or by force shall rescue or attempt to rescue such body from the place where it has been deposited for dissection in pursuance of that section, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both. **Rescue of dead body of executed offender**

This section is taken from U. S. Rev. Sts. § 5402. The phraseology is slightly changed and the words "or both" are added.

SECTION 145. Whoever shall, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demand or receive any money or other valuable thing, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both. **Extortion by informer**

This section is taken from U. S. Rev. Sts. § 5484. The words "law of the United States" are substituted for "internal revenue law," and the words "demand or" are inserted before "receive."

Sexton v. California, 189 U. S. 319, 324, 47 L. ed. 833. An indictment alleging that the defendant received money "under a threat of informing and as a consideration for informing" is not bad for duplicity. It is not necessary to state what particular offense against the internal revenue law the defendant claimed the other party had committed. The offense is a misdemeanor. It is not necessary to charge the intent, although it is a necessary element of the offense United States v. Fero, 18 F. R. 901.

SECTION 146. Whoever, having knowledge of the actual commission of the crime of murder or other felony cognizable **Misprision of felony**

**Misprision  
of felony**

by the courts of the United States, conceals and does not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, shall be fined not more than five hundred dollars, or imprisoned not more than three years, or both.

This section is taken from U. S. Rev. Sts. § 5390. The words "cognizable by the courts of the United States" are substituted for the places where the crime may be committed and the words "or both" are added at the end.

## CHAPTER SEVEN

## OFFENSES AGAINST THE CURRENCY, COINAGE, ETC.

| SECTION   | SECTION   |
|---|---|
| 147. "Obligation or other security of the United States" defined                          | 164. Counterfeiting minor coins   |
| 148. Forging or counterfeiting United States securities                                   | 165. Falsifying, mutilating, or lightening coinage  |
| 149. Counterfeiting national-bank notes   | 166. Debasement of coinage by officers of the Mint  |
| 150. Using plates to print notes without authority, etc.                                  | 167. Making or uttering coins in resemblance of money   |
| 151. Passing, selling, concealing, etc., forged obligations                               | 168. Making or issuing devices of minor coins   |
| 152. Taking impressions of tools, implements, etc.  | 169. Counterfeiting, etc., dies for coins of United States  |
| 153. Having in possession unlawfully such impressions                                     | 170. Counterfeiting, etc., dies for foreign coins   |
| 154. Buying, selling, or dealing in forged bonds, notes, etc.                             | 171. Making, importing, or having in possession tokens, prints, etc., similar to United States or foreign coins |
| 155. Secreting or removing tools or material used for printing bonds, notes, stamps, etc. | 172. Counterfeit obligations, securities, coins, or material for counterfeiting, to be forfeited                |
| 156. Counterfeiting notes, bonds, etc., of foreign governments                            | 173. Issue of search warrant for suspected counterfeits, etc.; forfeiture                                       |
| 157. Passing such forged notes, bonds, etc.   | 174. Circulating bills of expired corporations  |
| 158. Counterfeiting notes of foreign banks  | 175. Imitating national-bank notes with printed advertisements thereon  |
| 159. Passing such counterfeit bank notes  | 176. Mutilating or defacing national-bank notes   |
| 160. Having in possession such forged notes, bonds, etc.                                  | 177. Imitating United States securities or printing business cards on them                                      |
| 161. Having unlawfully in possession, or using, plates for such notes, bonds, etc.        | 178. Notes of less than one dollar not to be issued   |
| 162. Connecting parts of different instruments  |   |
| 163. Counterfeiting gold or silver coins or bars  |   |

SECTION 147. The words "obligation or other security of the United States" shall be held to mean all bonds, certificates of indebtedness, national-bank currency, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the "Obligation or other security of the United States" defined

**"Obliga-  
tion or  
other secu-  
rity of the  
United  
States "  
defined**

United States, stamps and other representatives of value, of whatever denomination, which have been or may be issued under any Act of Congress.

This section is the same as U. S. Rev. Sts. § 5413, except that the words "gold certificates, silver certificates" are inserted. See note to § 195. *Jolly v. United States*, 170 U. S. 402, 405, 42 L. ed. 1085; *United States v. Trout*, 4 Biss. 105, 28 Fed. Cas. 223; *Ex parte Houghton*, 7 F. R. 657, 8 Id. 897, 24 Alb. L. J. 145, 2 Crim. L. Mag. 759; *United States v. Owens*, 37 F. R. 112; *United States v. Albert*, 45 Id. 552; *United States v. Kuhl*, 85 Id. 625; 22 A. G. Op. 40. A certificate issued by an army paymaster to an enlisted man under the provisions of Rev. Sts. § 1305 is an "obligation or security of the United States." *Neall v. United States*, 118 F. R. 699. A cancelled postage stamp is not. 20 A. G. Op. 691. An indictment for the felonious possession of a national-bank note need not aver that it is the note of any particular bank if the note is copied in the indictment and appears to be such a note. *United States v. Williams*, 4 Biss. 302. See 14 A. G. Op. 528, as to internal revenue stamps bearing upon them the portraits of living persons. As to *United States v. Bennett*, 17 Blatch. 357, 24 Fed. Cas. 1107, see note to § 154. This section applies only to the penal statutes. 26 A. G. Op. 231, 233.

**Forging or  
counter-  
feiting  
securities**

SECTION 148. Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.

This section is the same as U. S. Rev. Sts. § 5414, except that the word "other" is inserted before "security." *Ex parte Carll*, 106 U. S. 521, 27 L. ed. 288; *United States v. Crecilius*, 34 F. R. 30; *United States v. Owens*, 37 Id. 112; *United States v. Albert*, 45 Id. 552, 555; *De Lemos v. United States*, 91 Id. 497; *Neall v. United States*, 118 Id. 699; *Hoke v. People*, 122 Ill. 511; 14 A. G. Op. 528; 26 Id. 231,

234. The offenses described in this section are not felonies and the defendant is entitled to but three peremptory challenges. *United States v. Coppersmith*, 4 F. R. 198, 10 Rep. 517. See *United States v. Field*, 16 F. R. 778, note. It is unnecessary to aver in the indictment any specific intent to defraud the United States or any particular person. The forgery of an indorsement of the payee upon a post-office warrant upon the Treasury of the United States, such indorsement being legally a part of said warrant, is an offense within this section. *United States v. Jolly*, 37 F. R. 108.

**Forging or  
counter-  
feiting  
securities**

SECTION 149. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be in imitation of, the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering, any such circulating notes, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered or spurious circulating note issued, or purporting to have been issued, by any such banking association, knowing the same to be falsely altered or spurious, shall be fined not more than one thousand dollars and imprisoned not more than fifteen years.

**Counter-  
feiting  
national-  
bank notes**

This section is the same as U. S. Rev. Sts. § 5415, except that there is a slight change in the punishment. *United States v. Roudenbush*, Baldw. 514; *United States v. Crecilius*, 34 F. R. 30; *United States v. Owens*, 37 Id. 112; *Thompson v. United States*, 144 Id. 14; *United States v. Bennett*, 17 Blatch. 357, 24 Fed. Cas. 1107; *Hoke v. People*, 122 Ill. 511. Knowledge is a necessary element of the crime of passing counterfeit notes, and must be shown by evidence other



Counter-  
feiting  
national-  
bank notes

than the spurious character of the notes. *Gallagher v. United States*, 144 F. R. 87. This section does not apply to a Confederate note passed on an ignorant person in the night time. *United States v. Wilson*, 44 F. R. 751. The unauthorized signing of names to notes of a national bank purporting to be those of the president and cashier constitutes the crime of forging such notes whether or not the names so signed are in fact those of the president and cashier. *Logan v. United States*, 123 F. R. 291. State courts have no jurisdiction of the crime of passing counterfeit bank notes. *Ex parte Houghton*, 7 F. R. 657, 8 Id. 897, 24 Alb. L. J. 145, 2 Crim. L. Mag. 759.

Using  
plates to  
print notes  
without  
authority,  
etc.

SECTION 150. Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, shall use such plate, stone, or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or whoever by any way, art, or means shall make or execute, or cause or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or whoever shall sell any such plate, stone, or other thing, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or

other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than fifteen years, or both.

Using  
plates to  
print notes  
without  
authority,  
etc.

This section is founded on U. S. Rev. Sts. § 5430, but is enlarged.

*United States v. Smith*, 40 F. R. 755, 758; 26 A. G. Op. 231, 234. It seems to have been held in *Re Wilson*, 18 F. R. 33, that a prosecution under this section may be begun by information. But in the Supreme Court in the same case it was held (114 U. S. 417, 29 L. ed. 89) that a person sentenced to imprisonment for an infamous crime, without having been indicted or presented by a grand jury, may be discharged on *habeas corpus*. It is a crime to photograph or execute likenesses of United States treasury notes, although the similarity of the photograph to the original is not calculated to deceive the public. *Ex parte Holcomb*, 2 Dillon, 392, 12 Fed. Cas. 328. A bond resembling a United States bond,

Using  
plates to  
print notes  
without  
authority,  
etc.

but unexecuted, is not an 'obligation or security' within this section, and an indictment cannot be sustained against one having it in possession. *United States v. Sprague*, 11 Biss. 376, 48 F. R. 828, s. c. *sub nom.* *United States v. Williams*, 14 Id. 550. The obligation must be executed. *United States v. Stevens*, 52 F. R. 120. But it is not necessary that the fraudulent bond should purport to be an obligation of the United States, or that the similitude should be such as to deceive experts or cautious men. It is sufficient if it is calculated to deceive an honest, sensible, and unsuspecting man of ordinary observation and care, dealing presumably with an honest man. *Id.* Whether an instrument is an obligation or not and within the statute is a question for the court. *Id.* Under the Act of May 16, 1884, it is a crime to print, sell, &c., the bond, note, or obligation of any foreign government. An indictment drawn under this Act, which alleged that the defendant caused three certain impressions to be printed, each in the likeness of a certain part, &c., except the signatures of a genuine treasury note of Brazil, was held sufficient. *United States v. White*, 25 F. R. 716. The section applies to uncanceled postage stamps but not to cancelled. 20 A. G. Op. 691, 697. It does not apply to a Confederate States note. *United States v. Kuhl*, 85 F. R. 624; *United States v. Barrett*, 111 Id. 369; nor to a note issued by a State bank. *United States v. Conners*, 111 F. R. 734; *United States v. Pitts*, 112 Id. 522. As to the elements to be proved hereunder, see *United States v. Fitzgerald*, 91 F. R. 374. "Adapted to the making of any such obligation," means adapted to the making of the genuine obligation, not the counterfeit. *Krakowski v. United States*, 161 F. R. 88.

Uttering,  
etc., forged  
obligations

SECTION 151. Whoever, with intent to defraud, shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like intent, any

falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than five thousand dollars and imprisoned not more than fifteen years. Uttering, etc., forged obligations

This section is the same as U. S. Rev. Sts. § 5431, except that the words "or any place subject to the jurisdiction thereof" are inserted. See note to § 147. *United States v. Randenbush*, 8 Pet. 288, 8 L. ed. 948; *United States v. Howell*, 11 Wall. 432, 20 L. ed. 195; *Ex parte Wilson*, 114 U. S. 417, 29 L. ed. 89; *United States v. Williams*, 4 Biss. 302, 28 Fed. Cas. 635; *United States v. Jolly*, 37 F. R. 108, 109; *United States v. Clarke*, 38 Id. 500, 503; *United States v. Holmes*, 40 Id. 750; *United States v. Albert*, 45 Id. 552, 557; *United States v. Howell*, 64 Id. 110; *United States v. Taranto*, 74 Id. 219; *De Lemos v. United States*, 91 Id. 497; *United States v. Barrett*, 111 Id. 369; 26 A. G. Op. 231, 234. The failure of an indictment under this section and § 5434, in setting out counterfeit notes, to exhibit an imprint of the seal of the Treasury which was shown on the notes put in evidence, is not such a variance as to make it improper to admit the notes in evidence. Neither was it a variance for the indictment to refer to the circulating notes of a national banking association, which it set out at length as "national bank currency notes." *United States v. Bennett*, 17 Blatch. 357, 9 Rep. 136. Different offenses under this section and § 5434 may be properly charged in different counts, notwithstanding different punishments are provided. *Id.* An indictment setting forth the offense in the words of the statute, without alleging that the defendant knew the instrument which he uttered to be false, forged, counterfeited, and altered, is insufficient after verdict and fails to charge any crime. *United States v. Carll*, 105 U. S. 611, 26 L. ed. 1135. An indictment describing the notes as "false, forged, and counterfeit treasury notes" is sufficient without adding that they were obligations or other securities of the United States. Nor need it aver that the counterfeit Treasury notes were

Uttering,  
etc., forged  
obligations

made in the resemblance of a genuine one. *United States v. Trout*, 4 Biss. 105, 28 Fed. Cas. 223; *United States v. Owens*, 37 F. R. 112. The use of the statutory words "false, forged, and counterfeited obligation of the United States" in an indictment sufficiently implies that the alleged counterfeit set out *in hæc verba* in the indictment purports to be a genuine obligation of the United States, and it is also intended to aver that there is or was a legally authorized and existing genuine obligation of which the alleged imitation pretended to be a forgery or counterfeit. *United States v. Owens*, *supra*. This section does not, in terms, require that the notes should be uttered as true or genuine, and one may be convicted of uttering or passing upon proof that he sold and delivered the notes as spurious to a third person, intending that they should be passed upon the public as genuine. The words "uttering" and "passing" do not necessarily import that the notes are transferred as genuine, but include any delivery of a note to another for value, intending that it shall be put into circulation as money. *United States v. Nelson*, 1 Abb. U. S. 135, 27 Fed. Cas. 80. The fact that other existing provisions punish the selling of spurious notes does not prevent the conviction of one upon an indictment for passing, uttering, and publishing such notes, upon proof that he sold them as spurious with intent that they should be put into circulation as money. *Id.* If one is convicted of several offenses charged in different counts, it amounts to a conviction on separate indictments, and each offense may be separately punished. *United States v. Bennett*, *supra*. A conviction under this section does not deprive the defendant of the right of suffrage in the State of New York. *United States v. Barnabo*, 14 Blatch. 74. The defendant may show that he received the notes in the course of business supposing them to be genuine. *United States v. Kenneally*, 5 Biss. 122. "*With like intent*" means with intent to defraud. *United States v. Provenzano*, 171 F. R. 675. The purpose of this statute is the protection

of the bonds and currency of the United States, and not the punishment of any fraud upon individuals; hence a charge of using a government bond or note, supposed to be genuine but in fact counterfeit, to defraud an individual is insufficient. *Dunbar v. United States*, 156 U. S. 185, 193, 39 L. ed. 390. A defendant may be convicted of a separate offense for each obligation he has in his possession with intent to pass. *Logan v. United States*, 123 F. R. 291. The indictment must purport to give a true copy of the notes in question. *United States v. Fisler*, 4 Biss. 59.

Uttering,  
etc., forged  
obligations

SECTION 152. Whoever, without authority from the United States, shall take, procure, or make, upon lead, foil, wax, plaster, paper, or any other substance or material, an impression, stamp, or imprint of, from, or by the use of any bedplate, bedpiece, die, roll, plate, seal, type, or other tool, implement, instrument, or thing used or fitted or intended to be used in printing, stamping, or impressing, or in making other tools, implements, instruments, or things to be used or fitted or intended to be used in printing, stamping, or impressing any kind or description of obligation or other security of the United States now authorized or hereafter to be authorized by the United States, or circulating note or evidence of debt of any banking association under the laws thereof, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Taking im-  
pressions  
of tools,  
implem-  
ents,  
etc.

This section is the same as U. S. Rev. Sts. § 5432. 14 A. G. Op. 528, 529.

SECTION 153. Whoever, with intent to defraud, shall have in his possession, keeping, custody, or control, without authority from the United States, any imprint, stamp, or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument, or thing, used, or fitted or intended to be used, for any of the purposes mentioned in the preceding section; or whoever, with intent to defraud, shall sell, give, or deliver any such imprint, stamp, or impression to any other person, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Having un-  
lawful pos-  
session of  
impressions

This section is the same as U. S. Rev. Sts. § 5433.

**Dealing in  
counterfeit  
securities**

SECTION 154. Whoever shall buy, sell, exchange, transfer, receive, or deliver any false, forged, counterfeited, or altered obligation or other security of the United States, or circulating note of any banking association organized or acting under the laws thereof, which has been or may hereafter be issued by virtue of any Act of Congress, with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

This section is the same as U. S. Rev. Sts. § 5434.

There was no intention of creating a distinction between national bank currency and the circulating notes issued by a banking association, by the language employed in this section, and § 147 is not modified hereby. *United States v. Bennett*, 17 Blatch. 357, 24 Fed. Cas. 1107.

**Secreting  
or embezzling tools  
and materials for  
printing  
securities**

SECTION 155. Whoever, without authority from the United States, shall secrete within, embezzle, or take and carry away from any building, room, office, apartment, vault, safe, or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any bedpiece, bedplate, roll, plate, die, seal, type, or other tool, implement, or thing used or fitted to be used in stamping or printing, or in making some other tool or implement used or fitted to be used in stamping or printing, any kind or description of bond, bill, note, certificate, coupon, postage stamp, revenue stamp, fractional currency note, or other paper, instrument, obligation, device, or document, now or hereafter authorized by law to be printed, stamped, sealed, prepared, issued, uttered, or put in circulation on behalf of the United States; or whoever, without such authority, shall so secrete, embezzle, or take and carry away any paper, parchment, or other material prepared and intended to be used in the making of any such papers, instruments, obligations, devices, or documents; or whoever, without such authority, shall so secrete, embezzle, or take and carry away any paper, parchment, or other material printed or stamped, in whole or part, and intended to be prepared, issued, or put in circulation on behalf of the United States as one of the papers, instruments, or obligations hereinbefore named, or printed or stamped, in whole or part, in the similitude of any such paper, instrument, or obligation, whether intended to issue or put

the same in circulation or not, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

**Secreting  
or embezzling tools  
and materials for  
printing  
securities**

This section is the same as U. S. Rev. Sts. § 5453. *Jolly v. United States*, 170 U. S. 402, 407, 42 L. ed. 1085.

**SECTION 156.** Whoever, within the United States or any place subject to the jurisdiction thereof, with intent to defraud, shall falsely make, alter, forge, or counterfeit any bond, certificate, obligation, or other security in imitation of, or purporting to be an imitation of, any bond, certificate, obligation, or other security of any foreign government, issued or put forth under the authority of such foreign government, or any treasury note, bill, or promise to pay issued by such foreign government, and intended to circulate as money, either by law, order, or decree of such foreign government; or whoever shall cause or procure to be so falsely made, altered, forged, or counterfeited, or shall knowingly aid or assist in making, altering, forging, or counterfeiting, any such bond, certificate, obligation, or other security, or any such treasury note, bill, or promise to pay, intended as aforesaid to circulate as money, shall be fined not more than five thousand dollars and imprisoned not more than five years.

**Counter-  
feiting  
foreign  
securities**

This section is the same as the Act of May 16, 1884, c. 52, § 1 (23 St. 22), except that the words "place subject to the jurisdiction thereof" are substituted for "territory thereof," and the words "upon conviction thereof in any circuit or district court of the United States" are omitted.

This is constitutional. See *United States v. White*, 27 F. R. 200. In a trial of an accessory under this section it is not necessary that the principal should have been convicted. *Bliss v. United States*, 105 F. R. 508.

**SECTION 157.** Whoever, within the United States or any place subject to the jurisdiction thereof, knowingly and with intent to defraud, shall utter, pass, or put off, in payment or negotiation, any false, forged, or counterfeited bond, certificate, obligation, security, treasury note, bill, or promise to pay, mentioned in the section last preceding, whether the same was made, altered, forged, or counterfeited within the United

**Uttering  
counterfeit  
foreign  
securities**



**Uttering counterfeit foreign securities** States or not, shall be fined not more than three thousand dollars and imprisoned not more than three years.

This section is the same as the Act of May 16, 1884, c. 52, § 2 (23 St. 23), except a few changes.

**Counterfeiting notes of foreign banks** SECTION 158. Whoever, within the United States or any place subject to the jurisdiction thereof, with intent to defraud, shall falsely make, alter, forge, or counterfeit, or cause or procure to be so falsely made, altered, forged, or counterfeited, or shall knowingly aid and assist in the false making, altering, forging, or counterfeiting of any bank note or bill issued by a bank or corporation of any foreign country, and intended by the law or usage of such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country, shall be fined not more than two thousand dollars and imprisoned not more than two years.

This section is the same as the Act of May 16, 1884, c. 52, § 3 (23 St. 23), except a few changes.

This is constitutional. An indictment hereunder need not allege or show that the notes are notes of money or issue of a foreign government, sovereign, or power, or that the offense is an offense against the law of nations. *United States v. Arjona*, 120 U. S. 479, 30 L. ed. 728.

**Uttering counterfeit notes of foreign banks** SECTION 159. Whoever, within the United States or any place subject to the jurisdiction thereof, shall utter, pass, put off, or tender in payment, with intent to defraud, any such false, forged, altered, or counterfeited bank note or bill, as mentioned in the preceding section, knowing the same to be so false, forged, altered, and counterfeited, whether the same was made, forged, altered, or counterfeited within the United States or not, shall be fined not more than one thousand dollars and imprisoned not more than one year.

This section is the same as the Act of May 16, 1884, c. 52, § 4 (23 St. 23), except a few changes.

**Having in possession counterfeit foreign securities, etc.** SECTION 160. Whoever, within the United States or any place subject to the jurisdiction thereof, shall have in his possession any false, forged, or counterfeit bond, certificate, obligation, security, treasury note, bill, promise to pay, bank note, or bill issued by a bank or corporation of any foreign country, with intent to utter, pass, or put off the same, or to

deliver the same to any other person with intent that the same may thereafter be uttered, passed, or put off as true, or shall knowingly deliver the same to any other person with such intent, shall be fined not more than one thousand dollars and imprisoned not more than one year.

**Having in possession counterfeit foreign securities, etc.**

This section is the same as the Act of May 16, 1884, c. 52, § 5 (23 St. 23), except a few changes.

SECTION 161. Whoever, within the United States or any place subject to the jurisdiction thereof, except by lawful authority, shall have control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed or may be printed any counterfeit note, bond, obligation, or other security, in whole or in part, of any foreign government, bank, or corporation, or shall use such plate, stone, or other thing, or knowingly permit or suffer the same to be used in counterfeiting such foreign obligations, or any part thereof; or whoever shall make or engrave, or cause or procure to be made or engraved, or shall assist in making or engraving, any plate, stone, or other thing, in the likeness or similitude of any plate, stone, or other thing designated for the printing of the genuine issues of the obligations of any foreign government, bank, or corporation; or whoever shall print, photograph, or in any other manner make, execute, or sell, or cause to be printed, photographed, made, executed, or sold, or shall aid in printing, photographing, making, executing, or selling, any engraving, photograph, print, or impression in the likeness of any genuine note, bond, obligation, or other security, or any part thereof, of any foreign government, bank, or corporation; or whoever shall bring into the United States or any place subject to the jurisdiction thereof, any counterfeit plate, stone, or other thing, or engraving, photograph, print, or other impressions of the notes, bonds, obligations, or other securities of any foreign government, bank, or corporation, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

**Having in possession, etc., counterfeit plates of foreign securities, etc.**

This section is the same as the Act of May 16, 1884, c. 52, § 6 (23 St. 23), except a few changes.

This section is constitutional. *United States v. Arjona*, 120 U. S. 479, 30 L. ed. 728; *United States v. White*, 27 F. R. 200. See also note to § 158.

Connecting  
parts of  
different  
bills, etc.

SECTION 162. Whoever shall so place or connect together different parts of two or more notes, bills, or other genuine instruments issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument, with intent to defraud, shall be deemed guilty of forgery in the same manner as if the parts so put together were falsely made or forged, and shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

This section is new.

Counter-  
feiting gold  
or silver  
coins or  
bars

SECTION 163. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting any coin or bars in resemblance or similitude of the gold or silver coins or bars which have been, or hereafter may be, coined or stamped at the mints and assay offices of the United States, or in resemblance or similitude of any foreign gold or silver coin which by law is, or hereafter may be, current in the United States, or are in actual use and circulation as money within the United States; or whoever shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person or persons whomsoever, or shall have in his possession any such false, forged, or counterfeited coin or bars, knowing the same to be false, forged, or counterfeited, with intent to defraud any body politic or corporate, or any person or persons whomsoever, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

This section is the same as U. S. Rev. Sts. § 5457, except a few changes. See note to § 326. *Ex parte* Waterman, 33 F. R. 29; *United States v. Lehman*, 39 Id. 768, 770; *King v. Kelley*, 3 Wyom. 566, 587.

The provision prohibiting the bringing into the United States of counterfeit coin or bars with intent to pass, utter, or publish them is constitutional. It is sustainable under the power to regulate commerce, and also under the power to coin money and regulate its value. *United States v. Mari-*

gold, 9 How. 560, 13 L. ed. 257; see *Campbell v. United States*, 10 Law Rep. 400, 4 Fed. Cas. 1201. The *head pistareen* is no part of the Spanish milled dollar, and is not a silver coin of Spain made current by law in the United States. *United States v. Gardner*, 10 Pet. 618, 9 L. ed. 556. The jury, in order to convict, should be satisfied that the resemblance of the counterfeit to the genuine is such as might deceive a person exercising ordinary caution. *United States v. Morrow*, 4 Wash. C. C. 733, 26 Fed. Cas. 1352. One who has made false coins with intent to circulate them, and has carried the manufacture so far as to produce coin capable of being uttered as genuine, may be convicted, though there was evidence that he intended to coat the coins with silver before putting them in circulation. *United States v. Abrams*, 21 Blatch. 553, 18 F. R. 823. Under this statute, as amended, it is an offense to change by any kind of manipulation any foreign coin into the resemblance of some coin of the United States, or foreign coin made current by law thereof, by gilding, electro-plating, or any other process or coloring. *United States v. Russell*, 22 F. R. 390. The words "in resemblance or similitude" are a variation or exposition of the words "falsely make, forge, or counterfeit." If the former were dropped out, the legal significance of the statute would be unchanged. *United States v. Otey*, 12 Sawyer, 416, 31 F. R. 68. The knowledge and intent to defraud, mentioned in this section, refer only to the crime of passing counterfeit money, or having the same in possession, and therefore an indictment for counterfeiting need contain no averment as to intent. *Id.*; *United States v. Russell*, *supra*. But see *United States v. King*, 5 McLean, 208, 26 Fed. Cas. 787. Proof that counterfeit coin was passed by an agent of the defendant employed for that purpose will sustain a conviction of the principal. *United States v. Morrow*, *supra*. The offense named in this section is not infamous, and therefore may be prosecuted

Counter-  
feiting gold  
or silver  
coins or  
bars

Counter-  
feiting gold  
or silver  
coins or  
bars

by information. *United States v. Yates*, 6 F. R. 861, 23 Alb. L. J. 407, 2 Crim. L. Mag. 520. But the Supreme Court has held, in *United States v. Petit*, 114 U. S. 429, 29 L. ed. 93, that prosecutions under this section must be by indictment. When counterfeiting or passing counterfeit coin is punishable by State laws, it may be punished in the State courts. *Ex parte Geisler*, 4 Woods, 381, 50 F. R. 411; *Chess v. State*, 1 Blackf. (Ind.) 198; *State v. McPherson*, 9 Ia. 53; *Martin v. State*, 18 Tex. App. 224; *Commonwealth v. Fuller*, 8 Met. (Mass.) 313; *Sizemore v. State*, 3 Head, 26; *State v. Pitman*, 1 Brev. 32; *State v. Antonio*, 3 Id. 562; *Dashing v. State*, 78 Ind. 357. As to notes, see *State v. Randall*, 2 Aik. 89; *State v. Tutt*, 2 Bailey L. 44; *Jett v. Commonwealth*, 18 Gratt. 933; *In re Truman*, 44 Mo. 181. See also *Sutton v. State*, 9 Ohio 133; *Harlan v. People*, 1 Dougl. (Mich.) 207; *Snoddy v. Howard*, 51 Ind. 411; *People v. McDonnell*, 80 Cal. 285; *Fox v. Ohio*, 5 How. 410, 12 L. ed. 213; *United States v. —*, 12 Rep. 90, 24 Fed. Cas. 742. Uttering and passing counterfeit coin is not a felony within Rev. Sts. § 819. *United States v. Coppersmith*, 4 F. R. 198, 10 Repr. 517. If it is alleged that the defendant did falsely make, forge, and counterfeit four pieces of silver coin of the coinage of the United States called a dollar, the indictment is good after verdict. *United States v. Otey*, *supra*. If the counterfeit is in resemblance of the genuine, it is not essential that it should be exact in all respects. If they are so much alike that the counterfeit is calculated to deceive one of ordinary caution and observation, although it would not deceive an expert, or a person who has had particular experience in such matters, it is within the statute. *United States v. Hopkins*, 26 F. R. 443. See, however, *United States v. Aylward*, 24 How. Prac. 142, 24 Fed. Cas. 907. The counterfeit must be passed with intent to deceive; and the circumstances and manner in which the act was done are to be considered. *United States v. Hopkins*, 26 F. R.

443. *United States v. Hargrave*, 17 Int. Rev. Rec. 39, 26 Fed. Cas. 164. It is not necessary that the coins be completed. *United States v. Abrams*, 18 F. R. 823. Possession of counterfeit coin and tools for making is *prima facie* evidence of guilt; it is, however, no crime to make for use in sleight-of-hand performances. *United States v. King*, 5 McLean, 208. If the indictment alleges the intent to defraud it is not necessary to set out the facts showing it. *McCarty v. United States*, 101 F. R. 113. As to the requisites of indictment and proof, see *United States v. Burns*, 5 McLean, 23, 24 Fed. Cas. 1313; *United States v. Owens*, 37 F. R. 112; *United States v. Bricker*, 3 Phila. 426, 16 Leg. Int. 190. See also *United States v. Bicksler*, 1 Mackey, 341, note, § 164.

Counter-  
feiting gold  
or silver  
coins or  
bars

SECTION 164. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting any coin in the resemblance or similitude of any of the minor coins which have been, or hereafter may be, coined at the mints of the United States; or whoever shall pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, or have in his possession any such false, forged, or counterfeited coin, with intent to defraud any person whomsoever, shall be fined not more than one thousand dollars and imprisoned not more than three years.

Counter-  
feiting  
minor coins

This section is the same as U. S. Rev. Sts. § 5458, except that the words "or any place subject to the jurisdiction thereof" are inserted. *Statler v. United States*, 157 U. S. 277, 39 L. ed. 700.

The offense of having counterfeit gold or silver coins in possession is not complete unless the accused had them in his possession "knowing the same to be false, forged, or counterfeited," whereas there is no necessity for the averment or proof of such *scienter* under the section punishing the possession of counterfeit *minor coinage*. The accused,

**Counter-  
feiting  
minor coins**

for the former offense, may be imprisoned ten years, while the limit of imprisonment under this section is three years. *United States v. Bicksler*, 1 Mackey, 341. If the name of the person intended to be defrauded is set out in the indictment it need not be alleged to whom the coin was actually passed. *United States v. Bejandio*, 1 Woods, 294, 24 Fed. Cas. 1076.

**Falsifying,  
mutilating,  
or lighten-  
ing coinage**

SECTION 165. Whoever, fraudulently, by any art, way, or means, shall deface, mutilate, impair, diminish, falsify, scale, or lighten, or cause or procure to be fraudulently defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, or willingly aid or assist in fraudulently defacing, mutilating, impairing, diminishing, falsifying, scaling, or lightening, the gold or silver coins which have been, or which may hereafter be, coined at the mints of the United States, or any foreign gold or silver coins which are by law made current or are in actual use or circulation as money within the United States or in any place subject to the jurisdiction thereof; or whoever shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, knowing the same to be defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, with intent to defraud any person whomsoever, or shall have in his possession any such defaced, mutilated, impaired, diminished, falsified, scaled, or lightened coin, knowing the same to be defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, with intent to defraud any person whomsoever, shall be fined not more than two thousand dollars and imprisoned not more than five years.

This section is the same as U. S. Rev. Sts. § 5459, except that the words "or in any place subject to the jurisdiction thereof" are twice inserted. Where a coin is punched so that an appreciable amount of the gold or silver is removed and the cavity is filled with a baser metal, there is a violation of this section, but where the punching is done with a sharp instrument so that the gold or silver is merely pushed to one side there is no offense. *United States v. Lissner*, 12 F. R. 840.

SECTION 166. If any of the gold or silver coins struck or coined at any of the mints of the United States shall be debased, or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to law, or if any of the scales or weights used at any of the mints or assay offices of the United States shall be defaced, altered, increased, or diminished through the fault or connivance of any officer or person employed at the said mints or assay offices, with a fraudulent intent; or if any such officer or person shall embezzle any of the metals at any time committed to his charge for the purpose of being coined, or any of the coins struck or coined at the said mints, or any medals, coins, or other moneys of said mints or assay offices at any time committed to his charge, or of which he may have assumed the charge, every such officer or person who commits any of the said offenses shall be fined not more than ten thousand dollars and imprisoned not more than ten years.

**Debasement  
of coins by  
officers of  
the mint**

This section is the same as U. S. Rev. Sts. § 5460, with a few changes. A count under this section may be joined with one under § 46. *United States v. Jones*, 69 F. R. 973.

SECTION 167. Whoever, except as authorized by law, shall make or cause to be made, or shall utter or pass, or attempt to utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for the use and purpose of current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, shall be fined not more than three thousand dollars, or imprisoned not more than five years, or both.

**Making or  
uttering  
coins  
resembling  
money**

This section is the same as U. S. Rev. Sts. § 5461. See note to § 171. *United States v. Bejandio*, 1 Woods, 294, 24 Fed. Cas. 1076. Passing pieces of metal apparently gold and octagonal in form, bearing on one side the device of an Indian, and on the other the inscription "½ dollar," is not a crime under this section. It does not extend to the uttering of a token which does not purport to be an imitation, or in substitution of any coin known to the law. *United States v. Bogart*, 9 Ben. 314, 24 Fed. Cas. 1185.



**Making or  
uttering  
devices of  
minor coins**

SECTION 168. Whoever, not lawfully authorized, shall make, issue, or pass, or cause to be made, issued, or passed, any coin, card, token, or device in metal, or its compounds, which may be intended to be used as money for any one-cent, two-cent, three-cent, or five-cent piece, now or hereafter authorized by law, or for coins of equal value, shall be fined not more than one thousand dollars and imprisoned not more than five years.

This section is the same as U. S. Rev. Sts. § 5462. This applies only to tokens intended to circulate as money. *United States v. Roussopulous*, 95 F. R. 977.

**Counter-  
feiting, etc.,  
dies for  
United  
States coins**

SECTION 169. Whoever, without lawful authority, shall make, or cause or procure to be made, or shall willingly aid or assist in making, any die, hub, or mold, or any part thereof, either of steel or plaster, or any other substance whatsoever, in likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining or making of any of the genuine gold, silver, nickel, bronze, copper, or other coins of the United States, that have been or hereafter may be coined at the mints of the United States; or whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof, or shall permit the same to be used for or in aid of the counterfeiting of any of the coins of the United States hereinbefore mentioned, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

This section is founded on the Act of Feb. 10, 1891, c. 127, § 1 (26 St. 742), with considerable changes. See note to § 168. 21 A. G. Op. 134. See particularly reference to *United States v. Keller* in Report of Committee on Revision. If the indictment alleges the intent to defraud, it is not necessary to set out the facts showing it. *McCarty v. United States*, 101 F. R. 113.

**Counter-  
feiting, etc.,  
dies for  
foreign  
coins**

SECTION 170. Whoever, within the United States or any place subject to the jurisdiction thereof, without lawful authority, shall make, or cause or procure to be made, or shall willingly aid or assist in making, any die, hub, or mold, or any part thereof, either of steel or of plaster, or of any other substance whatsoever, in the likeness or similitude, as to the design of the inscription thereon, of any die, hub, or mold

designated for the coining of the genuine coin of any foreign government; or whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof, or shall conceal, or knowingly suffer the same to be used for the counterfeiting of any foreign coin, shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both.

**Counterfeiting, etc., dies for foreign coins**

This section is founded on the Act of Feb. 10, 1891, c. 127, § 2 (26 St. 742), with a few changes. See note to § 169.

SECTION 171. Whoever, within the United States or any place subject to the jurisdiction thereof, shall make, or cause or procure to be made, or shall bring therein, from any foreign country, or shall have in possession with intent to sell, give away, or in any other manner use the same, any business or professional card, notice, placard, token, device, print, or impression, or any other thing whatsoever, in the likeness or similitude as to design, color, or the inscription thereon, of any of the coins of the United States or of any foreign country that have been or hereafter may be issued as money, either under the authority of the United States or under the authority of any foreign government, shall be fined not more than one hundred dollars. But nothing in this section shall be construed to forbid or prevent the printing and publishing of illustrations of coins and medals, or the making of the necessary plates for the same, to be used in illustrating numismatic and historical books and journals and the circulars of legitimate publishers and dealers in the same.

**Making, importing, etc., tokens, prints, etc., similar to United States or foreign coins**

This section is taken from the Act of March 3, 1903, c. 1015 (32 St. 1223). See also the Act of Feb. 10, 1891, c. 127, § 3 (26 St. 742). The phraseology is changed and the provisions are extended to any place subject to the jurisdiction of the United States. See note, § 168. The Secretary of the Treasury cannot seize the articles here set forth. 20 A. G. Op. 210.

SECTION 172. All counterfeits of any obligation or other security of the United States or of any foreign government, or counterfeits of any of the coins of the United States or of any foreign government, and all material or apparatus fitted or intended to be used, or that shall have been used, in the making of any such counterfeit obligation or other security or coins hereinbefore mentioned, that shall be found in the pos-

**Forfeiture of counterfeit obligations, securities, coins, and material**

**Forfeiture  
of counter-  
feit ob-  
ligations,  
securities,  
coins, and  
material**

session of any person without authority from the Secretary of the Treasury or other proper officer to have the same, shall be taken possession of by any authorized agent of the Treasury Department and forfeited to the United States, and disposed of in any manner the Secretary of the Treasury may direct. Whoever having the custody or control of any such counterfeits, material, or apparatus shall fail or refuse to surrender possession thereof upon request by any such authorized agent of the Treasury Department, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both.

This section is taken from the Act of Feb. 10, 1891, c. 127, § 4 (26 St. 742), except the last sentence, which is new. A counterfeit of an uncanceled foreign postage stamp is within this section. 21 A. G. Op. 136. The coin seized or its value in bullion cannot be returned to the person from whom taken. 23 A. G. Op. 458.

**Issue of  
search war-  
rants for  
suspected  
counter-  
feits, etc.  
Forfeiture  
of seized  
articles**

SECTION 173. The several judges of courts established under the laws of the United States and United States commissioners may, upon proper oath or affirmation, within their respective jurisdictions, issue a search warrant authorizing any marshal of the United States, or any other person specially mentioned in such warrant, to enter any house, store, building, boat, or other place named in such warrant, in which there shall appear probable cause for believing that the manufacture of counterfeit money, or the concealment of counterfeit money, or the manufacture or concealment of counterfeit obligations or coins of the United States or of any foreign government, or the manufacture or concealment of dies, hubs, molds, plates, or other things fitted or intended to be used for the manufacture of counterfeit money, coins, or obligations of the United States or of any foreign government, or of any bank doing business under the authority of the United States or of any State or Territory thereof, or of any bank doing business under the authority of any foreign government, or of any political division of any foreign government, is being carried on or practiced, and there search for any such counterfeit money, coins, dies, hubs, molds, plates, and other things, and for any such obligations, and if any such be found, to seize and secure the same and to make return thereof to the proper authority; and all such counterfeit money, coins, dies,

hubs, molds, plates, and other things, and all such counterfeit obligations so seized shall be forfeited to the United States.

**Issue of search warrants for suspected counterfeits, etc. Forfeiture of seized articles**

This section is the same as the Act of Feb. 10, 1891, c. 127, § 5 (26 St. 743), except that the words "in the day time only" after "named in such warrant" are omitted.

SECTION 174. In all cases where the charter of any corporation which has been or may be created by Act of Congress has expired or may hereafter expire, if any director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose of paying or redeeming its notes and obligations, shall knowingly issue, reissue, or utter as money, or in any other way knowingly put in circulation any bill, note, check, draft, or other security purporting to have been made by any such corporation whose charter has expired, or by any officer thereof, or purporting to have been made under authority derived therefrom, or if any person shall knowingly aid in any such act, he shall be fined not more than ten thousand dollars, or imprisoned not more than five years, or both. But nothing herein shall be construed to make it unlawful for any person, not being such director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose hereinbefore set forth, who has received or may hereafter receive such bill, note, check, draft, or other security, *bona fide* and in the ordinary transactions of business, to utter as money or otherwise circulate the same.

**Circulating bills of expired banks**

This section is the same as the U. S. Rev. Sts. § 5437, except that there is a slight change in the punishment.

SECTION 175. It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use any business or professional card, notice, placard, circular, handbill, or advertisement in the likeness or similitude of any circulating note or other obligation or security of any banking association organized or acting under the laws of the United States which has been or may be issued under any Act of Congress, or to write, print, or

**Imitating national bank notes with advertisements thereon**

**Imitating  
national  
bank notes  
with adver-  
tisements  
thereon**

otherwise impress upon any such note, obligation, or security, any business or professional card, notice, or advertisement, or any notice or advertisement of any matter or thing whatever. Whoever shall violate any provision of this section shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.

This section is the same as U. S. Rev. Sts. § 5188, except a change in punishment and the striking out of the provision as to the informer. As to the former penalty, see *United States v. Laescki*, 29 F. R. 699.

**Mutilating,  
etc., na-  
tional bank  
notes**

SECTION 176. Whoever shall mutilate, cut, deface, disfigure, or perforate with holes, or unite or cement together, or do any other thing to any bank bill, draft, note, or other evidence of debt, issued by any national banking association, or shall cause or procure the same to be done, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be reissued by said association, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.

This section is the same as U. S. Rev. Sts. § 5189, except that there is a change in the punishment.

**Imitating  
securities  
or printing  
advertisements  
thereon**

SECTION 177. It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use, any business or professional card, notice, placard, circular, handbill, or advertisement, in the likeness or similitude of any bond, certificate of indebtedness, certificate of deposit, coupon, United States note, Treasury note, gold certificate, silver certificate, fractional note, or other obligation or security of the United States which has been or may be issued under or authorized by any Act of Congress heretofore passed or which may hereafter be passed; or to write, print, or otherwise impress upon any such instrument, obligation, or security, any business or professional card, notice, or advertisement, or any notice or advertisement of any matter or thing whatever. Whoever shall violate any provision of this section shall be fined not more than five hundred dollars.

This section is the same as U. S. Rev. Sts. § 3708, except that the words "gold certificate, silver certificate" are inserted, a change is made in the punishment and the provision as to the informer is stricken out. See note to § 175.

SECTION 178. No person shall make, issue, circulate, or pay out any note, check, memorandum, token, or other obligation for a less sum than one dollar, intended to circulate as money or to be received or used in lieu of lawful money of the United States; and every person so offending shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

Issuing  
notes less  
than one  
dollar

This section is the same as U. S. Rev. Sts. § 3583. See note to § 168. *Hollister v. Mercantile Assn.*, 111 U. S. 62, 64, 28 L. ed. 352; 19 A. G. Op. 98; 20 Id. 682. This does not apply to an obligation for fifty cents, payable to the bearer on demand in goods: *United States v. Van Auken*, 96 U. S. 366, 24 L. ed. 852; *Barnett v. State*, 54 Ala. 579; nor to ticket issued by the defendant reading "Monongahela Bridge — good for one trip," *United States v. Monongahela Bridge Co.*, 26 Law Rep. 107, 26 Fed. Cas. 1292.

## CHAPTER EIGHT

## OFFENSES AGAINST THE POSTAL SERVICE

## SECTION

- 179. Conducting post-office without authority
- 180. Illegal carrying of mail by carriers and others
- 181. Conveyance of mail by private express forbidden
- 182. Transporting persons unlawfully conveying mail
- 183. Sending letters by private express
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- 187. Wearing uniform of carrier without authority
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## SECTION

- 198. Injuring letter boxes or mail matter; assaulting carrier, etc.
- 199. Deserting the mail
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- 209. Failure to account for postage and to cancel stamps, etc., by officials
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- 211. Obscene, etc., matter non-mailable
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- 213. Lottery, gift enterprise, etc., circulars, etc., not mailable
- 214. Postmasters not to be lottery agents
- 215. Use of mails to promote frauds
- 216. Fraudulently assuming fictitious address

| SECTION   | SECTION  |
|---|--|
| 217. Poisons and explosives non-mailable          | 224. Inducing or prosecuting false claims            |
| 218. Counterfeiting money orders                  | 225. Misappropriation of postal funds or property    |
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| 220. Counterfeiting, etc., foreign stamps         | 227. Fraudulent use of official envelopes            |
| 221. Inclosing higher class in lower class matter | 228. Fraudulent increase of weight of mail           |
| 222. Postmaster illegally approving bond, etc.    | 229. Offenses against foreign mail in transit        |
| 223. False evidence as to second-class matter     | 230. Omission to take oath                           |
|   | 231. Definitions                                     |

SECTION 179. Whoever, without authority from the Postmaster-General, shall set up or profess to keep any office or place of business bearing the sign, name, or title of post-office, shall be fined not more than five hundred dollars. **Conducting post-office without authority**

This section is taken from U. S. Rev. Sts. § 3829. The first sentence relative to establishing post-offices or post roads is omitted, and "fine" is substituted for "penalty" in the part of the section adopted.

SECTION 180. Whoever, being concerned in carrying the mail, shall collect, receive, or carry any letter or packet, or cause or procure the same to be done, contrary to law, shall be fined not more than fifty dollars, or imprisoned not more than thirty days, or both. **Illegal carrying of mail by officials, etc.**

This section is the same as U. S. Rev. Sts. § 3981, except a change in the punishment.

"*Packet*" includes newspapers, and mail contractors have no authority to carry newspapers or pamphlets other than in the mail, unless authorized to do so. 4 A. G. Op. 276.

SECTION 181. Whoever shall establish any private express for the conveyance of letters or packets, or in any manner cause or provide for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place, to any other city, town, or place, between which the mail is regularly carried, or whoever shall aid or assist therein shall be fined **Conveying mail by private express**



Conveying  
mail by  
private  
express

not more than five hundred dollars, or imprisoned not more than six months, or both: *Provided*, That nothing contained in this section shall be construed as prohibiting any person from receiving and delivering to the nearest post-office, postal car, or other authorized depository for mail matter, any mail matter properly stamped.

This section is taken from U. S. Rev. Sts. § 3982, and Act of March 3, 1879, c. 180, § 1 (20 St. 356). There is a change in the punishment, and in the proviso the words "or other authorized depository for mail matter" are inserted.

United States *v.* Hall, 9 Am. L. Reg. 232; United States *v.* Kochersperger, Id. 145; United States *v.* Thompson, 9 Law Rep. 451, 28. Fed. Cas. 97; United States *v.* Kimball, 7 Law Rep. 32; United States *v.* Adams, 1 West. L. J. 315; United States *v.* Gray, 3 Haz. U. S. Reg. 227; United States *v.* Pomeroy, 3 N. Y. Leg. Obs. 143; 19 A. G. Op. 670. An unstamped letter relating to merchandise shipped may be lawfully transmitted therewith outside the mails. United States *v.* U. S. Express Co., 5 Biss. 91; United States *v.* Bromley, 12 How. 88, note, 13 L. ed. 905. A railroad company may carry its own mail relating to its own business. 21 A. G. Op. 394. Letters sent by private carrier cannot be charged with postage, although the carriers may be subject to penalties. 4 A. G. Op. 349.

This section applies to the streets of New York as "*post routes*." United States *v.* Easson, 18 F. R. 590. Letter carriers' routes are post routes. Blackham *v.* Gresham, 16 F. R. 609. But the streets of a town or city in which the free delivery of mail matter has not been established are not post routes, and a private despatch company may be employed to carry and deliver within the municipal limits sealed letters on which no postage has been paid. 14 A. G. Op. 152.

SECTION 182. Whoever, being the owner, driver, conductor, master, or other person having charge of any stage-coach, railway car, steamboat, or other vehicle or vessel, shall knowingly convey, or knowingly permit the conveyance of any person acting or employed as a private express for the conveyance of letters or packets, and actually in possession of the same for the purpose of conveying them, contrary to law, shall be fined not more than one hundred and fifty dollars.

Transporting persons unlawfully conveying mail

This section is taken from U. S. Rev. Sts. § 3983. The phraseology is changed, and fine or imprisonment or both are substituted for a penalty.

SECTION 183. Whoever shall transmit by private express or other unlawful means, or deliver to any agent thereof, or deposit or cause to be deposited at any appointed place, for the purpose of being so transmitted, any letter or packet, shall be fined not more than fifty dollars.

Sending letters by private express

This section is the same as U. S. Rev. Sts. § 3984, except a change in the punishment.

SECTION 184. Whoever, being the owner, driver, conductor, master, or other person having charge of any stage-coach, railway car, steamboat, or conveyance of any kind which regularly performs trips at stated periods on any post route, or from any city, town, or place to any other city, town, or place between which the mail is regularly carried, and which shall carry, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such steamboat or other vessel, to the current business of the carrier, or to some article carried at the same time by the same stage-coach, railway car, or other vehicle, except as otherwise provided by law, shall be fined not more than fifty dollars.

Carrying letters out of the mail over post routes

This section is taken from U. S. Rev. Sts. § 3985. It is made to apply to any conveyance. There is a change in the punishment. The Act of March 1, 1884, c. 9 (23 St. 3), provides "that all public roads and highways while kept up and maintained as such are hereby declared to be post routes."

**Carrying  
letters out  
of the mail  
over post  
routes**

See notes to § 181. Under the statutes of 1825 and 1827 it was a fraud upon the revenue for a common carrier to be the bearer of letters except those of his employers, either with or without recompense. 4 A. G. Op. 159; Id. 276.

**Carrying  
letters out  
of the mail  
on vessels**

SECTION 185. Whoever shall carry any letter or packet on board any vessel which carries the mail, otherwise than in such mail, except as otherwise provided by law, shall be fined not more than fifty dollars, or imprisoned not more than one month, or both.

This section is taken from U. S. Rev. Sts. § 3986. There is a change in the punishment.

**When con-  
veyance by  
private  
persons is  
lawful**

SECTION 186. Nothing in this chapter shall be construed to prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messenger employed for the particular occasion only.

This section is the same as U. S. Rev. Sts. § 3992.

United States *v.* Easson, 18 F. R. 590; United States *v.* Thompson, 9 Law Rep. 451, 28 Fed. Cas. 97; 9 A. G. Op. 161. A messenger who regularly goes between two points and takes letters entrusted to him for a fee, is not a special but a general messenger, and a common carrier. 4 A. G. Op. 159. "*Private hands*" is to be distinguished from a common carrier. A common carrier may carry its own mail relating to its own business. 21 A. G. Op. 394.

**Wearing  
carrier's  
uniform  
without  
authority**

SECTION 187. Whoever, not being connected with the letter-carrier branch of the postal service, shall wear the uniform or badge which may be prescribed by the Postmaster-General, to be worn by letter carriers, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.

This section is taken from U. S. Rev. Sts. § 3867. There is a change in the phraseology, and the word "badge" is added. King *v.* United States, 32 Ct. Cl. 231, 240.

SECTION 188. It shall be unlawful to paint, print, or in any manner to place upon or attach to any steamboat or other vessel, or any car, stage-coach, vehicle, or other conveyance, not actually used in carrying the mail, the words "United States Mail," or any words, letters, or characters of like import; or to give notice, by publishing in any newspaper or otherwise, that any steamboat or other vessel, or any car, stage-coach, vehicle, or other conveyance, is used in carrying the mail, when the same is not actually so used; and every person who shall violate, and every owner, receiver, lessee, or managing operator thereof, who shall cause, suffer, or permit the violation of any provision of this section, shall be liable, and shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

Vehicles,  
etc., claim-  
ing to be  
mail car-  
riers

This section is taken from U. S. Rev. Sts. § 3979. The words "car" and "or other conveyance" are twice inserted; the words "and every person who shall violate, and every owner, receiver, lessee, or managing operator thereof, who shall cause, suffer, or permit the violation of any provision of this section shall be liable," are substituted for "or any person willfully aiding or abetting therein," and the words "shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both," are substituted for "be punishable by fine of not less than one hundred dollars nor more than five hundred dollars."

SECTION 189. Whoever shall tear, cut, or otherwise injure any mail bag, pouch, or other thing used or designed for use in the conveyance of the mail, or shall draw or break any staple or loosen any part of any lock, chain, or strap attached thereto, with intent to rob or steal any such mail, or to render the same insecure, shall be fined not more than five hundred dollars, or imprisoned not more than three years, or both.

Injuring  
mail bags,  
etc.

This section is the same as U. S. Rev. Sts. § 5476.

SECTION 190. Whoever shall steal, purloin, or embezzle any mail bag or other property in use by or belonging to the Post-Office Department, or shall appropriate any such property to his own or any other than its proper use, or shall convey away any such property to the hindrance or detriment

Stealing  
post-office  
property

**Stealing  
post-office  
property**

of the public service, shall be fined not more than two hundred dollars, or imprisoned not more than three years, or both.

This section is the same as U. S. Rev. Sts. § 5475, except that the words "for any lucre, gain, or convenience" and "for any lucre or gain" are omitted, and there is a change in the punishment.

*Sorenson v. United States*, 168 F. R. 785. A count of an indictment which charged a forcible breaking and entry into a post-office by opening the door of and entering the postmaster's private office, and stealing of postage stamps from the vault therein, was held not fatally defective although these are distinct offenses under this section or § 192. *United States v. Yennie*, 74 F. R. 221; *United States v. Williams*, 57 Id. 201. If the court has imposed as punishment both fine and imprisonment, and the fine has been paid, it cannot, during the same term, modify its judgment. A second judgment on the same verdict is void. *Ex parte Lange*, 18 Wall. 163, 21 L. ed. 872; see *Case of Lange*, 13 Blatch. 546.

**Stealing or  
forging  
mail locks  
or keys**

SECTION 191. Whoever shall steal, purloin, embezzle, or obtain by any false pretense, or shall aid or assist in stealing, purloining, embezzling, or obtaining by any false pretense, any key suited to any lock adopted by the Post-Office Department and in use on any of the mails or bags thereof, or any key to any lock box, lock drawer, or other authorized receptacle for the deposit or delivery of mail matter; or whoever shall knowingly and unlawfully make, forge, or counterfeit, or cause to be unlawfully made, forged, or counterfeited, any such key, or shall have in his possession any such mail lock or key with the intent unlawfully or improperly to use, sell, or otherwise dispose of the same, or to cause the same to be unlawfully or improperly used, sold, or otherwise disposed of; or whoever, being engaged as a contractor or otherwise in the manufacture of any such mail lock or key, shall deliver or cause to be delivered, any finished or unfinished lock or key used or designed for use by the department, or the interior part of any such lock, to any person not duly authorized under the hand of the Postmaster-General and the seal of the Post-Office Depart-

ment, to receive the same, unless the person receiving it is the contractor for furnishing the same or engaged in the manufacture thereof in the manner authorized by the contract, or the agent of such manufacturer, shall be fined not more than five hundred dollars and imprisoned not more than ten years.

**Stealing  
or forging  
mail locks  
or keys**

This section is taken from U. S. Rev. Sts. § 5477. It is enlarged so as to include all kinds of receptacles for the deposit or delivery of mail matter, and a provision as to a fine of "not more than five hundred dollars" is added.

SECTION 192. Whoever shall forcibly break into or attempt to break into any post-office, or any building used in whole or in part as a post-office, with intent to commit in such post-office, or building, or part thereof, so used, any larceny or other depredation, shall be fined not more than one thousand dollars and imprisoned not more than five years.

**Breaking  
into and  
entering  
post-office**

This section is the same as U. S. Rev. Sts. § 5478, except that the words "in such post-office or building, or part thereof, so used" are substituted for "therein."

*Sorenson v. United States*, 168 F. R. 785. The present form of this section is doubtless due to a line of decisions which held that under the former wording no crime was committed unless the defendant broke into or attempted to break into that part of the building actually used as a post-office. *United States v. Martin*, 140 F. R. 256; *United States v. Shelton*, 100 Id. 831; *United States v. Saunders*, 77 Id. 170; *United States v. Williams*, 57 Id. 201; *United States v. Campbell*, 9 Sawyer, 20, 16 F. R. 233. The fact that the defendant was found in the post-office after the building had been closed for the night, and after all persons had apparently been removed therefrom, is sufficient *prima facie* evidence of forcible breaking. *United States v. Lantry*, 30 F. R. 232.

SECTION 193. Whoever, by violence, shall enter a post-office car, or any apartment in any car, steamboat, or vessel, assigned to the use of the Mail Service, or shall willfully or maliciously assault or interfere with any postal clerk in the

**Unlawfully  
entering  
post-office  
car, etc.**

**Unlawfully  
entering  
post-office  
car, etc.**

discharge of his duties in connection with such car, steamboat, vessel, or apartment thereof, or shall willfully aid or assist therein, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

This section is the same as the Act of March 3, 1903, c. 1009, § 5 (32 St. 1176), except that the words "steamboat or vessel," "or interfere," and "or both" are added.

**Stealing,  
secreting,  
embezzling,  
etc., mail  
matter**

**SECTION 194.** Whoever shall steal, take, or abstract, or by fraud or deception obtain, from or out of any mail, post-office, or station thereof, or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or shall abstract or remove from any such letter, package, bag, or mail, any article or thing contained therein, or shall secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or whoever shall buy, receive, or conceal, or aid in buying, receiving, or concealing, or shall unlawfully have in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been so stolen, taken, embezzled, or abstracted; or whoever shall take any letter, postal card, or package, out of any post-office or station thereof, or out of any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post-office or station thereof, or other authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with a design to obstruct the correspondence, or to pry into the business or secrets of another, or shall open, secrete, embezzle, or destroy the same, shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both.

This section is taken from U. S. Rev. Sts. §§ 3892, 5469, 5470, except that it has been changed so as to punish the unauthorized taking of anything from the mail. There are also other slight changes.

*Crowley v. United States*, 194 U. S. 461, 462, 48 L. ed. 1075; *United States v. Beatty*, Hempst. 487, 24 Fed. Cas.

1057; *United States v. Golding*, 2 Cranch C. C. 212, 25 Fed. Cas. 1349; *United States v. Harmison*, 3 Sawy. 556, 26 Fed. Cas. 165; *United States v. Laws*, 2 Lowell, 115, 26 Fed. Cas. 892; *United States v. Martin*, 2 McLean, 256, 26 Fed. Cas. 1183; *United States v. Okie*, 5 Blatch. 516, 27 Fed. Cas. 231; *United States v. Patterson*, 6 McLean, 466, 27 Fed. Cas. 466; *United States v. Rapp*, 30 F. R. 818; *United States v. Jolly*, 37 Id. 108; *United States v. Wilson*, 44 Id. 593; *United States v. Mulholland*, 50 Id. 413; *Ex parte Rickelt*, 61 Id. 203; 25 A. G. Op. 494, 496. For cases on the question whether the article stolen was a thing of value as required under the old forms of the statute see *United States v. Davis*, 33 F. R. 865; *United States v. Burns*, 5 McLean, 23, 24 Fed. Cas. 1313; *United States v. Driscoll*, 1 Lowell, 303, 25 Fed. Cas. 914; *United States v. Mulvaney*, 4 Parker Cr. R. 164; *United States v. Pond*, 2 Curtis, 265; *United States v. Nutt*, 23 Int. Rev. Rec. 386; *United States v. Thoma*, 25 Id. 171; *United States v. Eddy*, 1 Biss. 227. It is unnecessary to set out in the indictment the ownership of the property taken. *Bowers v. United States*, 148 F. R. 379; *United States v. Trosper*, 127 Id. 476; *United States v. Falkenhainer*, 21 Id. 624. A decoy letter is within this section. *United States v. Cottingham*, 2 Blatch. 470, 25 Fed. Cas. 673; *United States v. Foye*, 1 Curt. 364, 25 Fed. Cas. 1198. It is sufficient to lay the charge in the words of the statute which describes the offense, unless those words include cases not intended by the legislature to be embraced in the Act, in which case the indictment must show the case to be one not thus excluded. It was not necessary under 4 St. 109, § 22, to allege a venue of the unlawful intent, nor that the opening of the letter was unlawful, nor that the person to whom it was addressed was a real person, it being alleged that the letter was opened with intent to obstruct the correspondence of such person, for in such case it will be assumed that he was a real person. *United States v. Pond*, 2 Curtis, 265, 27 Fed. Cas. 590. If the

Stealing,  
secretory,  
embezzling,  
etc., mail  
matter



Stealing,  
secreting,  
embezzling,  
etc., mail  
matter

statute makes one or more distinct acts connected with the same transaction indictable they may be averred as one act. Therefore, a count charging that the defendant did secrete *and* embezzle a letter is not bad for duplicity. *United States v. Sander*, 6 McLean, 598. The offenses described in this section are not infamous, and may therefore be prosecuted by information. *United States v. Wynn*, 9 F. R. 886; *United States v. Falkenhainer*, *supra*. This section punishes any person, whether in the employ of the postal department or not, who opens, embezzles, or destroys mail matter containing things of value, or the representatives of value, notwithstanding the special provisions made for the punishment of postal employees in § 195. *United States v. Gruver*, 35 F. R. 59; *United States v. Marselis*, 2 Blatch. 108, note, p. 111. To constitute an offense within the meaning of the clause "take the mail or any letter or packet therefrom from any post-office . . . with or without the consent of the person having custody thereof," the taking of the mail or of a letter from the post-office must be with criminal intent; not a taking by the authority of the person to whom the letter is addressed, although there is a subsequent embezzlement, nor a taking by mistake or with an innocent intent. *Re Burkhardt*, 33 F. R. 25; *United States v. Pearce*, 2 McLean, 14, 27 Fed. Cas. 480; *United States v. Inabnet*, 41 F. R. 130, 131; *United States v. Smith*, 11 Utah, 433. If a letter has been delivered to an authorized agent, there can be no embezzlement of it. *United States v. Sander*, *supra*. In *United States v. Meyers*, 142 F. R. 907, an indictment was held defective because it would cover a letter delivered by a carrier to the defendant by a mutual mistake. It is an offense to open a letter with wrongful intent though the letter was not sealed, though it was written by the defendant himself, and though the name to which the letter was addressed was not the name of the person for whom it was intended. *United States v. Pond*, *supra*. But after the post-office has volun-

tarily terminated its custody of a letter by delivery to the person supposed to be entitled to it, the rights of the person actually entitled thereto are governed by the laws of the State, and not by those of the United States. *United States v. Parsons*, 2 Blatch. 104, 27 Fed. Cas. 451. “*Mail*” may here mean “either the whole body of matter transported by the postal agents, or any letter or package forming a component part of it.” *United States v. Inabnet*, 41 F. R. 130. Mail matter left on the top of a street letter box is not within this section. 17 A. G. Op. 524. Where several letters are stolen by the same person, separate counts charging the several offenses may be joined in one indictment. *United States v. Brent*, 17 Int. Rev. Rec. 54, 24 Fed. Cas. 1225. A count under this section may be joined with one under § 192. *Ex parte Peters*, 12 F. R. 461. A confession of guilt of robbing a letter box made by the defendant to a policeman is not sufficient to convict on a plea of “not guilty” unless supported by other evidence. *United States v. Mayfield*, 59 F. R. 118.

Stealing,  
secretary,  
embezzling,  
etc., mail  
matter

Upon the trial of an indictment hereunder which, in several counts, charges the defendant with receiving, concealing, and aiding in the concealment of property stolen from the mails of the United States, proof of receiving, concealing, or aiding in concealing, is sufficient to establish the guilt of the defendant. *United States v. Montgomery*, 3 Sawyer, 544. And one jointly indicted with another for this offense may be convicted, though the other has been discharged upon a plea of *autrefois convict*. *Id.* The conviction of the person who stole the property which the defendant is accused of receiving is sufficient, on the trial of the latter, to show that it was stolen, if the article has been identified. *United States v. Keene*, 5 McLean, 509, 26 Fed. Cas. 694; *United States v. Hardyman*, 13 Pet. 176, 10 L. ed. 113. Theft and embezzlement are distinct offenses, and an indictment under this section which charges aid in buying a draft, knowing that

Stealing,  
secreting,  
embezzling,  
etc., mail  
matter

it had been "stolen and embezzled," is not only uncertain but fails to state any offense whatever. *United States v. Thomas*, 69 F. R. 588, 590.

The purpose of the last part of this section is to protect mailed letters until actually received by the persons to whom they are addressed. *United States v. McCready*, 11 F. R. 225; *United States v. Hilbury*, 29 Id. 705; *United States v. Parsons*, 2 Blatch. 104; *United States v. Sander*, 6 McLean, 598; *United States v. Lancaster*, 2 McLean, 431, 26 Fed. Cas. 854; *United States v. Pearce*, 2 McLean, 14; *United States v. Tanner*, 6 Id. 128, 28 Fed. Cas. 12. This provision does not apply to the theft of a letter after it has been placed on the desk of the addressee: *United States v. Safford*, 66 F. R. 942; nor after it has been delivered at his hotel; *United States v. Lee*, 90 F. R. 256; nor after it has been delivered and readdressed for forwarding but not remailed; *United States v. Huilsman*, 94 F. R. 486; nor after it has been redelivered to an agent of the addressee. *United States v. Bullington*, 170 F. R. 121. But where a letter addressed to the plaintiff was delivered to the defendant, who negligently retained possession thereof for several days, the defendant was held liable for damages to the defendant caused by the delay. *Cohen v. Cohen*, 26 Tex. Civ. App. 315. The indictment must sufficiently describe and identify the publication or print deposited in the mail to enable the defendant to prepare his defense, and the judgment to be pleaded in bar of another prosecution for the same offense. *United States v. Clarke*, 40 F. R. 325, 326. If a postmaster refuses to deliver valuable letters on which postage has been prepaid, the remedy is by mandamus or replevin and not by injunction. *Boardman v. Thompson*, 12 F. R. 675. As to the offense of intercepting letters of post-office employees, see *United States v. Bellew*, 2 Brock. 280, 24 Fed. Cas. 1079; *United States v. Nott*, 1 McLean, 499, 27 Fed. Cas. 189; *United States v. Oliver*, 4 L. Rep. 197, 27 Fed. Cas. 232.

SECTION 195. Whoever, being a postmaster or other person employed in any department of the postal service, shall unlawfully detain, delay, or open any letter, postal card, package, bag, or mail intrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or station thereof established by authority of the Postmaster-General; or shall secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail; or shall steal, abstract, or remove from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both.

Postmaster  
or postal  
employee  
detaining,  
destroying,  
or embez-  
zling mail  
matter

This section is made up of U. S. Rev. Sts. §§ 3890, 3891, 5467. See notes to §§ 194 and 213. *Wight*, petitioner, 134 U. S. 136, 33 L. ed. 865; *United States v. Lacher*, Id. 624, 626, 631, 33 L. ed. 1080; *Rosencrans v. United States*, 165 Id. 257, 41 L. ed. 708; *Barrett v. United States*, 169 Id. 218, 227, 42 L. ed. 723; *Scott v. United States*, 172 Id. 343, 350, 43 L. ed. 471; *Crowley v. United States*, 194 Id. 461, 462, 48 L. ed. 1075; *New Orleans National Bank v. Merchant*, 18 F. R. 847; *Chitwood v. United States*, 153 Id. 551; 25 A. G. Op. 496. This section applies only to those in the postal service, while § 194 applies to every person. *Goode v. United States*, 159 U. S. 663, 668, 40 L. ed. 297; *United States v. Nott*, 1 McLean, 499. It applies to a stage driver employed by a stage company which has a contract for carrying the mails and who has been sworn as a mail carrier, although he is paid by the company and not by the government: *United States v. Hanna*, 4 New Mex. 216; to a local mail agent who received the mail bags from and delivered them to the trains, who received letters from individuals for the purpose of delivering them to the road agents, and who had taken the oath of office though he received no compensation from the government: *United States v. Hamilton*, 11 Biss. 85, 9 F. R. 442; to a person employed in the Post-

Postmaster  
or postal  
employee  
detaining,  
destroying,  
or embezzling mail  
matter

Office Department as a carrier, postmaster, or assistant postmaster, *United States v. Nott*, 1 McLean, 499; *United States v. Belew*, 2 Brock. 280; *United States v. Brent*, 17 Int. Rev. Rec. 54; *United States v. Pelletreau*, 14 Blatch. 126.

A mailable packet of merchandise is within this section. *United States v. Blackman*, 5 McCrary, 438, 17 F. R. 837; *United States v. Beaty, Hempst.* 487. Gold dust in packages of not more than four pounds' weight paying letter postage is mailable matter, and, whether it is or not, stealing it is an offense hereunder. *United States v. Randall, Deady*, 524. Decoy letters are within this section. *Grimm v. United States*, 156 U. S. 604, 611, 39 L. ed. 550, 45 F. R. 558; *Goode v. United States*, 159 U. S. 663, 669, 40 L. ed. 297; *Montgomery v. United States*, 162 Id. 410, 40 L. ed. 1020; *Hall v. United States*, 168 Id. 632, 42 L. ed. 607; *United States v. Bethea*, 44 F. R. 802, 17 Wash. Law Rep. 744; *United States v. Wight*, 38 F. R. 106; *United States v. Jones*, 80 Id. 513; *United States v. Foye*, 1 Curtis, 364. But see *contra*, *United States v. Denicke*, 35 F. R. 407. This section does not apply to the detention of nonmailable matter. 26 A. G. Op. 555, 567. Although it is not material for what purpose a letter was mailed, *United States v. Cottingham*, 2 Blatch. 470; or how it came into the possession of a person in the postal service, *United States v. Hamilton*, 11 Biss. 85, 9 F. R. 442,—it must become part of the mail matter and be intended to be conveyed by mail. *United States v. Rapp*, 30 F. R. 818; *United States v. Baugh*, 4 Hughes, 501, 1 F. R. 784. A letter properly stamped and with the receiving stamp of the office thereon, and placed in a carrier's box with other letters and addressed to a real person on his route, is "intended to be conveyed by mail." *Bromberger v. United States*, 128 F. R. 346. See also *Walster v. United States*, 42 Id. 891; *United States v. Hall*, 76 Id. 566. The section covers letters deposited in a post-office to be forwarded or handed to a mail carrier on his route between post-

offices. *United States v. Pearce*, 2 McLean, 14; *United States v. Martin*, Id. 256. Proof that a post-office is a post-office *de facto* is sufficient without proof that it has been regularly established by law. *Goode v. United States*, 159 U. S. 663, 40 L. ed. 297; see *United States v. Mulholland*, 50 F. R. 413.

Postmaster or postal employee detaining, destroying, or embezzling mail matter

On the question whether the package or letter contained certain articles of value as formerly required under Rev. Sts. § 5467, see *United States v. Lacher*, 134 U. S. 624, 33 L. ed. 1080; *United States v. Hardyman*, 13 Pet. 176, 10 L. ed. 113; *United States v. Baugh*, 4 Hughes, 501, 1 F. R. 784; *United States v. Long*, 4 Woods, 454, 10 F. R. 879; *United States v. Falkenhainer*, 21 F. R. 624; *United States v. Atkinson*, 34 Id. 316; *United States v. Gruver*, 35 Id. 59; *United States v. Hartley*, 42 Id. 835; *United States v. Jones*, 80 Id. 513; *Bromberger v. United States*, 128 Id. 346; *United States v. Fisher*, 5 McLean, 23; *United States v. Eliason*, 18 D. C. 104.

*The offense.* As to the two offenses formerly set out in Rev. Sts. § 5467, see *Hall v. United States*, 168 U. S. 632, 42 L. ed. 607; *United States v. Wight*, 38 F. R. 106. "Stealing" is not confined to technical larceny. *United States v. Jolly*, 37 F. R. 108, 111. One may be punished separately for embezzling a letter and stealing its contents. *United States v. Harmon*, 3 Sawy. 556. A postmaster who takes money from a registered letter and borrows it, hoping and expecting to return it, and who does in fact return it, is within the prohibition of this section. *United States v. Thompson*, 29 F. R. 706. It is not an offense within this section for one who is in the postal service to secrete, embezzle, or destroy a letter intrusted to him or coming into his possession, unless such letter was intended to be conveyed by mail, or carried or delivered by some one employed in the postal service, or forwarded through or delivered from the post-office or branch post-office established by authority of the Postmaster-General. *United States v. Matthews*, 35 F. R. 890. So long as anything remains to be done to make the envelope mailable

**Postmaster  
or postal  
employee  
detaining,  
destroying,  
or embezzling mail  
matter**

matter, and the postmaster, acting as agent for the sender, exchanges silver for paper money and places the latter in the envelope, the letter is not within the meaning of this section. *United States v. Taylor*, 37 F. R. 200. The offenses herein described may be committed without taking the letter from the post-office building. *United States v. Nott*, 1 McLean, 499. But as to a postmaster acting as agent, see *United States v. Bramham*, 3 Hughes, 557.

*How prosecuted.* — The offenses herein described not being infamous, may be prosecuted by information. *United States v. Baugh*, 4 Hughes, 501, 1 F. R. 784. A detective officer of the Post-Office Department is a competent witness. *Andrews v. United States*, 162 U. S. 420, 40 L. ed. 1023; *Price v. United States*, 165 Id. 311, 41 L. ed. 727.

*Indictment.* An indictment hereunder is sufficient if it follows the language of the statute, although it does not allege that the mail was detained knowingly and intentionally. *United States v. Holmes*, 40 F. R. 750. An indictment against a post-office employee for stealing money from a letter should aver that the letter was one intended to be conveyed by mail, that it had been deposited in the post-office in the charge of the defendant, that it came into his possession in the regular course of his official duty, and that he was employed in the post-office department; and if it does not, it is defective. *Shaw v. United States*, 165 F. R. 174; *United States v. Winter*, 13 Blatch. 333; *United States v. Patterson*, 6 McLean, 466; *United States v. Nott*, *supra*; *United States v. Laws*, 2 Lowell, 115, *contra*. Under an indictment charging that a package was put into the mail at a certain post-office and came into the possession of the defendant in his capacity as mail clerk, evidence may be introduced that the package had been properly stamped. *Alexis v. United States*, 129 F. R. 60. Under § 21, Act of March 3, 1825, for embezzlement of a letter containing a bank note, it was held unnecessary to allege the particular office held by the accused, or that the

note was of an incorporated bank or of any value. *United States v. Clark, Crabbe*, 584. It seems that the proviso in Rev. Sts. § 5467, "and provided the same shall not have been delivered to the party to whom it is directed," appertaining to the contents of letters, did not apply to the first class of offenses named in the section, and therefore an indictment against a letter-carrier for embezzling a letter need not aver that the letter had not been delivered to the party to whom it was directed. *United States v. Jenther*, 13 Blatch. 335. An indictment will lie which charges a person employed as a letter-carrier with having embezzled a letter which was intended to be conveyed by mail and contained an article of value, and had been intrusted to him, and had come into his possession as such letter-carrier. *United States v. Pelletreau*, 14 Blatch. 126. An indictment charging the embezzlement of letters need not, under § 18, Act of April 30, 1810, allege that the articles were intended to be conveyed by post, nor describe them nor the bank notes they contained particularly, it being averred that the particular description of the letters and notes was to the grand jurors unknown. *United States v. Golding*, 2 Cranch C. C. 212. It is no objection to the indictment that the embezzlement of the letters and the stealing of the notes therefrom were charged in the same count. *Id.*; *United States v. Byrne*, 44 F. R. 188; *United States v. Delaney*, 55 *Id.* 475; *United States v. Wight*, 35 Int. Rev. Rec. 87; *Bromberger v. United States*, 128 F. R. 346. An indictment charging only embezzlement of the letters is sufficient. *United States v. Taylor*, 1 Hughes, 514. If several indictments for similar offenses are found, the court may order them to be consolidated, and if the defendant is thereby prejudiced a new trial will be granted. *United States v. Brent*, 17 Int. Rev. Rec. 54. An indictment for embezzling and secreting valuable letters need not allege that the act was done with a fraudulent intent, since the offense is a mere misdemeanor. *United States v. Atkinson*, 34 F. R.

Postmaster  
or postal  
employee  
detaining,  
destroying,  
or embez-  
zling mail  
matter



Postmaster  
or postal  
employee  
detaining,  
destroying,  
or embez-  
zling mail  
matter

316. But an indictment for stealing a letter under this section must allege a wrongful intent, and it is not good and sufficient unless it lays the thing alleged to have been stolen as the property of some one other than the accused. *United States v. Foye*, 1 Curtis, 364; *Jones v. United States*, 27 F. R. 447. This last allegation was held to be unnecessary under 13 St. 337, § 12, in *United States v. Laws*, 2 Lowell, 115, in *United States v. Okie*, 5 Blatch. 516, and, it seems, in *United States v. Baugh*, 4 Hughes, 501, 1 F. R. 784, 9 Rep. 574. A substantive description of the articles stolen is sufficient. *Jones v. United States*, *supra*; *United States v. Patterson*, 6 McLean, 466. But if described they must be proved as laid. *United States v. Lancaster*, 2 McLean, 431. It is unnecessary to state to what particular place the letter was to be sent (*United States v. Okie*, *supra*; *United States v. Laws*, *supra*); but if alleged it cannot be rejected as surplusage, but must be proved as laid (*United States v. Foye*, *supra*). All the facts which aggravate the crime must be alleged. *United States v. Nott*, 1 McLean, 499. It is not necessary to allege that the grand jury which found the indictment was duly organized, and that twelve of its members concurred in finding it. If the letter was inclosed in an envelope and the envelope was directed to A. B., the letter is well described as directed to A. B. *United States v. Laws*, *supra*. See also, as to requisites of an indictment, *United States v. Martin*, 2 McLean, 256; *United States v. Jones*, 31 F. R. 718; *United States v. McKenzie*, 35 Id. 826.

The Postmaster-General cannot require a deputy postmaster to deliver mail matter in violation of his State laws, as, *e. g.*, insurrectionary papers. 8 A. G. Op. 489. But a postmaster may properly refuse to deliver mail matter to one who intends to distribute it in opposition to the public carriers (9 Id. 161); or to persons who assume a name in which letters are addressed, for the purpose of defrauding the public. Id. 454; *United States v. Denicke*, 35 F. R. 407.

SECTION 196. Whoever, being a postmaster or other person employed in any department of the postal service, shall improperly detain, delay, embezzle, or destroy any newspaper, or permit any other person to detain, delay, embezzle, or destroy the same, or open, or permit any other person to open, any mail or package of newspapers not directed to the office where he is employed; or whoever shall open, embezzle, or destroy any mail or package of newspapers not being directed to him, and he not being authorized to open or receive the same; or whoever shall take or steal any mail or package of newspapers from any post-office or from any person having custody thereof, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both.

Postmas-  
ters, etc.,  
detaining or  
destroying  
newspapers

This section is taken from U. S. Rev. Sts. § 5471, but is enlarged. There is also a change in the punishment.

*Ex. parte* Friday, 43 F. R. 916; *State v. Nicholls*, 50 La. Ann. 699. This does not apply to the detention of non-mailable matter. 26 A. G. Op. 555, 567.

SECTION 197. Whoever shall assault any person having lawful charge, control, or custody of any mail matter, with intent to rob, steal, or purloin such mail matter or any part thereof, or shall rob any such person of such mail or any part thereof, shall, for a first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery, he shall wound the person having custody of the mail, or put his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned twenty-five years.

Assaulting  
mail cus-  
todian with  
intent to  
rob, and  
robbing  
mail

This section is taken from U. S. Rev. Sts. §§ 5472, 5473. There is a change in the punishment.

*Downing v. United States*, 8 Ariz. 31. The word "rob" is to be taken in its common-law signification, viz., the stealing or taking from the person of another, or in the presence of another, property of any amount, with such a degree of force or terror as to induce the person to part with it unwillingly. *Harrison v. United States*, 163 U. S. 140, 41 L. ed. 104; *United States v. Reeves*, 38 F. R. 404, 406; *United States v. Wilson*, Baldw. 78, 93. Stopping the

**Assaulting  
mail cus-  
todian with  
intent to  
rob, and  
robbing  
mail**

carrier on the highway, demanding the surrender of the mail, and showing weapons calculated to take his life, such as pistols or dirks, putting him in fear of his life, is placing him in jeopardy. *Id.* Pistols are dangerous weapons. If an offer or threat is made to shoot with them, the presumption is that they were loaded. *Id.*; *United States v. Hare*, 2 Wh. Cr. Cas. 283; *United States v. Wood*, 3 Wash. C. C. 440, 28 Fed. Cas. 754. Putting the carrier in fear and his life in peril or danger is putting his life in jeopardy. *United States v. Wood*, 2 Wh. Cr. Cas. 325, 28 Fed. Cas. 755. It is not necessary to a conviction that the carrier of the mail should have taken the prescribed oath, or that the whole mail should be taken. *United States v. Wilson, Baldw.* 78, 83. It is sufficient to charge the crime in the words of the statute. The county in which it was committed need not be named. It is sufficient to show that the crime was committed within the jurisdiction of the court where the indictment is pending. *Id.* One may be convicted under this section of robbing a postmaster. *United States v. Bowman*, 3 New Mex. 311.

**Injury to  
letter  
boxes, etc.  
Assault on  
letter car-  
rier**

SECTION 198. Whoever shall willfully injure, tear down, or destroy any letter box, pillar box, lock box, lock drawer, or other receptacle established or approved by the Postmaster-General for the safe deposit of matter for the mail or for delivery, or any lock or similar device belonging or attached thereto, or any letter box or other receptacle designated or approved by the Postmaster-General for the receipt or delivery of mail matter on any rural free-delivery route, star route, or other mail route, or shall break open the same; or shall willfully injure, deface, or destroy any mail matter deposited in any letter box, pillar box, lock box, lock drawer, or other receptacle established or approved by the Postmaster-General for the safe deposit of matter for the mail or for delivery; or shall willfully take or steal such matter from or out of any such letter box, pillar box, lock box, lock drawer, or other receptacle, or shall willfully and maliciously assault any letter or mail carrier, knowing him to be such, while engaged on his route in the discharge of his duty as such carrier, or shall

willfully aid or assist in any offense defined in this section, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

Injury to  
letter  
boxes, etc.  
Assault on  
letter car-  
rier

This section is founded on U. S. Rev. Sts. §§ 3869, 5466, and the Acts of April 21, 1902, c. 563 (32 St. 113), and March 3, 1903, c. 1009, § 3 (32 St. 1175), but is enlarged.

SECTION 199. Whoever, having taken charge of any mail, shall voluntarily quit or desert the same before he has delivered it into the post-office at the termination of the route, or to some known mail carrier, messenger, agent, or other employee in the postal service authorized to receive the same, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

Deserting  
the mail

This section is the same as U. S. Rev. Sts. § 5474, except a change in the punishment. A mail contractor has no right to employ an express company not under his control to carry the mail, and if he does so it is a violation of this section. 15 A. G. Op. 70.

SECTION 200. The master or other person having charge or control of any steamboat or other vessel passing between ports or places in the United States, arriving at any such port or place where there is a post-office, shall deliver to the postmaster or at the post-office within three hours after his arrival, if in the daytime, and if at night, within two hours after the next sunrise, all letters and packages brought by him or within his power or control and not relating to the cargo, addressed to or destined for such port or place, for which he shall receive from the postmaster two cents for each letter or package so delivered, unless the same is carried under a contract for carrying the mail; and for every failure so to deliver such letters or packages, the master or other person having charge or control of such steamboat or other vessel, shall be fined not more than one hundred and fifty dollars.

Delivery of  
letters by  
master of  
vessel

This section is founded on U. S. Rev. Sts. § 3977, but is enlarged.

**Obstructing  
the mail**

**SECTION 201.** Whoever shall knowingly and willfully obstruct or retard the passage of the mail, or any carriage, horse, driver, or carrier, or car, steamboat, or other conveyance or vessel carrying the same, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.

This section is founded on U. S. Rev. Sts. § 3995. The words "or car, steamboat, or other conveyance or vessel," and "or imprisoned not more than six months, or both," are inserted.

*Clune v. United States*, 159 U. S. 590, 594, 40 L. ed. 269. This provision has been held to apply only to the mail while *in transitu*, and not to the stopping of a horse when being taken from a stable for use in carrying the mail. *United States v. McCracken*, 3 Hughes, 544, 26 Fed. Cas. 1069. *Contra*, in the case of an innholder, who, to enforce his lien for livery, stopped stage-horses in the public highway, while drawing a stage-coach containing the mail. *United States v. Barney*, 3 Hughes, 545, 24 Fed. Cas. 1014; 3 Hall's L. J. 128. It applies to the stopping of a railway mail train by one who has a judgment and writ of possession from a State court against the railroad company in respect to the lands about to be crossed by such train (*United States v. De Mott*, 3 F. R. 478); to the stopping of such a train, although those guilty are willing to permit the mail car only to pass (*United States v. Clark*, 13 Phila. 476, 25 Fed. Cas. 443; *In re Grand Jury*, 62 F. R. 834, 840; 21 A. G. Op. 9); or to the stopping of a train by discharged railway laborers, although their primary intention may be, not to obstruct the mail, but to obtain a return passage (*United States v. Kane*, 19 F. R. 42; *United States v. Clark*, *supra*; and to any case where those who perform the act complained of know that it will have the effect to retard the passage of the mail, and perform it with that intent. *United States v. Kirby*, 7 Wall. 482, 19 L. ed. 278; *United States v. Claypool*, 14 F. R. 127. It does not apply to a temporary deten-

tion of the mail caused by the carrier's arrest upon a charge of felony. *United States v. Kirby, supra.* And, in certain cases in other courts, it has even been held not to apply where the person carrying the mail is taken in custody by a qualified officer holding a warrant for his arrest for an offense which is not a felony, such as fast driving, in violation of a municipal ordinance. *United States v. Hart*, Pet. C. C. 390, 3 Wheeler C. C. 304; 5 A. G. Op. 554; *Penny v. Walker*, 64 Maine, 430. See *United States v. Harvey*, 1 Brunner, 540, 26 Fed. Cas. 206.

Obstructing  
the mail

The United States government has power in every portion of the country, under its control of interstate commerce and of the mails, to remove any obstruction to such commerce or to the postal service. *In re Debs*, 158 U. S. 564, 39 L. ed. 1092. This applies to obstructions to the most modern forms of conveyance upon railroads and electric railways, and includes employees who suddenly desert their work. *Id.*; *United States v. Thomas*, 55 F. R. 380; *United States v. Sears, Id.* 268; *United States v. Woodward*, 44 Id. 592; *Thomas v. Cincinnati, etc. Ry. Co.*, 62 Id. 803; *In re Grand Jury, Id.* 834, 840; *United States v. Cassidy*, 67 Id. 698; *So. Cal. R. Co. v. Rutherford*, 62 Id. 796. Equity will not specifically enforce a contract for personal services. *Farmers' Loan & Trust Co. v. No. Pac. R. Co.*, 60 F. R. 803, 5 Chic. L. J. N. s. 461. The refusal of the owners of a private toll road to permit the passage of a mail wagon over the road without paying toll is not a violation of this section. *Harper v. Endert*, 103 F. R. 911; *contra, United States v. Sears*, 55 Id. 268. An indictment under this section must allege that the accused knew the train to be carrying mail. *Salla v. United States*, 104 F. R. 544; and see *Conrad v. United States*, 127 Id. 798. Where the act causing the obstruction is itself unlawful, an intent to obstruct will be imputed. *United States v. Lawhead*, 10 Chic. Leg. News, 60, 2 Cin. Law Bul. 263, 268, 26 Fed. Cas. 877. The fact that one committed murder

**Obstructing the mail** in violating this section does not prevent his being tried for murder in a State court. *Crossley v. California*, 168 U. S. 640, 42 L. ed. 610.

A conspiracy to commit an offense described in this section may be an offense under § 37. *United States v. Stevens*, 2 Haskell, 164, 171, 27 Fed. Cas. 1312; 21 A. G. Op. 9.

**Ferryman delaying mail** SECTION 202. Whoever, being a ferryman, shall delay the passage of the mail by willful neglect or refusal to transport the same across any ferry, shall be fined not more than one hundred dollars.

This section is the same as U. S. Rev. Sts. § 3996, except a change in the punishment.

**Letters carried in foreign vessels to be deposited in post-office** SECTION 203. All letters or other mailable matter conveyed to or from any part of the United States by any foreign vessel, except such sealed letters relating to such vessel or any part of the cargo thereof as may be directed to the owners or consignees of the vessel, shall be subject to postage charge, whether addressed to any person in the United States or elsewhere, provided they are conveyed by the packet or other ship of a foreign country imposing postage on letters or other mailable matter conveyed to or from such country by any vessel of the United States; and such letters or other mailable matter carried in foreign vessels, except such sealed letters relating to the vessel or any part of the cargo thereof as may be directed to the owners or consignees, shall be delivered into the United States post-office by the master or other person having charge or control of such vessel when arriving, and be taken from the United States post-office when departing, and the postage justly chargeable by law paid thereon; and for refusing or failing to do so, or for conveying such letters or other mailable matter, or any letters or other mailable matter, intended to be conveyed in any vessel of such foreign country, over or across the United States, or any portion thereof, the party offending shall be fined not more than one thousand dollars.

This section is taken from U. S. Rev. Sts. § 4016, but is considerably enlarged.

SECTION 204. No vessel arriving within a port or collection district of the United States shall be allowed to make entry or break bulk until all letters on board are delivered to the nearest post-office, and the master or other person having charge or control thereof has signed and sworn to the following declaration before the collector or other proper customs officer :

Vessels to deliver letters at post-office before entry oath

I, A. B., master ———, of the ———, arriving from ———, and now lying in the port of ———, do solemnly swear (or affirm) that I have to the best of my knowledge and belief delivered to the post-office at ——— every letter and every bag, packet, or parcel of letters which was on board the said vessel during her last voyage, or which were in my possession or under my power or control.

And any master or other person having charge or control of such vessel who shall break bulk before he has delivered such letters shall be fined not more than one hundred dollars.

This section is founded on Rev. Sts. § 3988, but is enlarged so as to include the person having charge or control of any vessel.

SECTION 205. Whoever shall use or attempt to use in payment of postage, any canceled postage stamp, whether the same has been used or not; or shall remove, attempt to remove, or assist in removing, the canceling or defacing marks from any postage stamp, or the superscription from any stamped envelope, or postal card, that has once been used in payment of postage, with the intent to use the same for a like purpose, or to sell or offer to sell the same, or shall knowingly have in possession any such postage stamp, stamped envelope, or postal card, with intent to use the same, or shall knowingly sell or offer to sell any such postage stamp, stamped envelope, or postal card, or use or attempt to use the same in payment of postage; or whoever unlawfully and willfully shall remove from any mail matter any stamp attached thereto in payment of postage; or shall knowingly use or cause to be used in payment of postage, any postage stamp, postal card, or stamped envelope, issued in pursuance of law, which has already been used for a like purpose; shall, if he be a person employed in the postal service, be fined not more than five hundred dollars, or imprisoned not more than three years, or both; and if he

Using, etc., canceled stamps



**Using, etc., canceled stamps** be a person not employed in the postal service, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

This section is taken from U. S. Rev. Sts. §§ 3922, 3923, 3924, 3925, and the Act of March 3, 1879, c. 180, § 28 (20 St. 362), but is enlarged. On the joinder of counts on the different parts of this section in one indictment see *United States v. Spintz*, 18 F. R. 377.

**False returns by postmasters to increase compensation**

SECTION 206. Whoever, being a postmaster or other person employed in any branch of the postal service, shall make, or assist in making, or cause to be made, a false return, statement, or account to any officer of the United States, or shall make, assist in making, or cause to be made, a false entry in any record, book, or account, required by law or the rules or regulations of the Post-Office Department to be kept in respect of the business or operations of any post-office or other branch of the postal service, for the purpose of fraudulently increasing his compensation or the compensation of the postmaster or any employee in a post-office; or whoever, being a postmaster or other person employed in any post-office or station thereof, shall induce, or attempt to induce, for the purpose of increasing the emoluments or compensation of his office, any person to deposit mail matter in, or forward in any manner for mailing at, the office where such postmaster or other person is employed, knowing such matter to be properly mailable at another post-office, shall be fined not more than five hundred dollars, or imprisoned not more than two years, or both.

This section is largely new, although see the Acts of June 17, 1878, c. 259, § 1 (20 St. 141), and Aug. 4, 1886, c. 901, § 3 (24 St. 221). One who aids in the making of false returns is liable as principal. *United States v. Snyder*, 14 F. R. 554, 8 Id. 805.

**Collecting unlawful postage**

SECTION 207. Whoever, being a postmaster or other person authorized to receive the postage of mail matter, shall fraudulently demand or receive any rate of postage or gratuity or reward other than is provided by law for the postage of such

mail matter, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.

**Collecting  
unlawful  
postage**

This section is founded on U. S. Rev. Sts. § 3899. The words "mail matter" are substituted for "letters," and the words "such mail matter," for "letters or packets." There is a change in the punishment.

SECTION 208. Whoever, being a postmaster or other person employed in any branch of the postal service, and being intrusted with the sale or custody of postage stamps, stamped envelopes, or postal cards, shall use or dispose of them in the payment of debts, or in the purchase of merchandise or other salable articles, or pledge or hypothecate the same, or sell or dispose of them except for cash; or sell or dispose of postage stamps or postal cards for any larger or less sum than the values indicated on their faces; or sell or dispose of stamped envelopes for a larger or less sum than is charged therefor by the Post-Office Department for like quantities; or sell or dispose of, or cause to be sold or disposed of, postage stamps, stamped envelopes, or postal cards at any point or place outside of the delivery of the office where such postmaster or other person is employed; or induce or attempt to induce, for the purpose of increasing the emoluments or compensation of such postmaster, or the emoluments or compensation of any other person employed in such post-office or any station thereof, or the allowances or facilities provided therefor, any person to purchase at such post-office or any station thereof, or from any employee of such post-office, postage stamps, stamped envelopes, or postal cards; or sell or dispose of postage stamps, stamped envelopes, or postal cards, otherwise than as provided by law or the regulations of the Post-Office Department, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

**Unlawful  
pledging  
or sale of  
stamps**

This section is founded on U. S. Rev. Sts. § 3920, and the Act of June 17, 1878, c. 259, § 1 (20 St. 141), but considerable new matter is added.

United States v. Walter Scott Stamp Co., 87 F. R. 721; 25 A. G. Op. 354, 359. The government must prove that the stamps thus used were received by the postmaster from the department. United States v. Williamson, 26 F.

Unlawful  
pledging  
or sale of  
stamps

R. 690. A postmaster can only dispose of stamps thus intrusted to him at their face value, for cash, to third persons. *United States v. Douglass*, 33 F. R. 381. Sale of stamps on credit is forbidden. *In re Palliser*, 136 U. S. 257, 34 L. ed. 514.

Failure to  
account for  
postage  
due, etc.

SECTION 209. Whoever, being a postmaster or other person engaged in the postal service, shall collect and fail to account for the postage due upon an article of mail matter which he may deliver, without having previously affixed and canceled the special stamp provided by law, or shall fail to affix such stamp, shall be fined not more than fifty dollars.

This section is taken from the Act of March 3, 1879, c. 180, § 27 (20 St. 362).

Issuing  
unpaid-for  
money  
orders

SECTION 210. Whoever, being a postmaster or other person employed in any branch of the postal service, shall issue a money order without having previously received the money therefor, shall be fined not more than five hundred dollars.

• This section is the same as U. S. Rev. Sts. § 4030, except that the words "or other person employed in any branch of the postal service" are inserted, and there is a slight change in the punishment. *Ex parte Hibbs*, 26 F. R. 421, 432; *United States v. Royer*, 122 Id. 844.

Obscene  
matter un-  
mailable

SECTION 211. Every obscene, lewd, or lascivious, and every filthy, book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information directly or indirectly, where, or how, or from whom, or by what means any of the hereinbefore-mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed,

or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed; and every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can be, used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose; and every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing, is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post-office or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by this section to be nonmailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

**Obscene  
matter un-  
mailable**

This section is taken from U. S. Rev. Sts. § 3893, but is greatly enlarged by the Act of Sept. 26, 1888, c. 1039, § 2 (25 St. 496). See also the Act of May 27, 1908, c. 206 (35 St. 416). *In re Palliser*, 136 U. S. 257, 267, 34 L. ed. 514; *Safer v. United States*, 87 F. R. 329; *Barnes v. United States*, 166 Id. 113; 26 A. G. Op. 555. This section is constitutional. *Public Clearing House v. Coyne*, 194 U. S. 497, 508, 48 L. ed. 1092; *In re Rapier*, 143 Id. 110, 36 L. ed. 93; *Ex parte Jackson*, 96 Id. 727, 24 L. ed. 877, 14 Blatch. 245; *United States v. Harmon*, 45 F. R. 414, 50 Id. 921; *United States v. Bennett*, 16 Blatch. 338. The constitutional guaranties of religious freedom have no bearing on this section. *Knowles v. United States*, 170 F. R. 409. The punishment is not excessive. *Rinker v. United States*, 151 F. R. 755. See Thomas on "Non-Mailable Matter."

"*Obscene, lewd, or lascivious.*" The test is whether the tendency of the matter is to deprave or corrupt the minds of those open to lascivious influences. *Dunlop v. United*

Obscene  
matter un-  
available

States, 165 U. S. 486, 41 L. ed. 799; *United States v. Wyatt*, 122 F. R. 316; *United States v. Janes*, 74 Id. 545; *United States v. Harmon*, 45 Id. 414; *United States v. Slenker*, 32 Id. 691; *United States v. Wightman*, 29 Id. 636; *United States v. Bebout*, 28 Id. 522; *United States v. Britton*, 17 Id. 731; *United States v. Smith*, 11 Id. 663; *United States v. Bennett*, 16 Blatch. 338; *Larison v. State*, 49 N. J. Law, 256; *Smith v. State*, 24 Tex. Ct. of Apps. 1. A writing need not be lewd and lascivious as well as obscene. *Knowles v. United States*, 170 F. R. 409. *Contra*, *United States v. Moore*, 104 F. R. 78. But an indictment is not bad for duplicity if it charges that the writing is obscene, lewd, and lascivious. *Swearingen v. United States*, 161 U. S. 446, 450, 40 L. ed. 765.

"*Indecent*" as here applied to other publications has no broader meaning than obscene, lewd, and lascivious. *United States v. O'Donnell*, 165 F. R. 218. This section applies to all prints, writings, etc., of an obscene, lewd, or lascivious character. *Timmons v. United States*, 85 F. R. 204. It applies to standard books upon medicine and surgery intended for general circulation, though the information may be scientifically accurate provided the acts described and the ideas conveyed are calculated to deprave the morals of the reader. *Burton v. United States*, 142 F. R. 57; *United States v. Smith*, 45 Id. 476; *United States v. Chesman*, 19 Id. 497; *Commonwealth v. Landis*, 8 Phila. 453; 19 A. G. Op. 667. In such works much depends upon the manner in which the subject is treated. *Hanson v. United States*, 157 F. R. 749. The section applies to a postal card imputing illicit intercourse to a person other than the addressee. *United States v. Pratt*, 2 Am. L. T. Rep. n. s. 238, 27 Fed. Cas. 611; but not to a sealed letter charging the addressee with adultery. *United States v. Wroblenski*, 118 F. R. 495. It applies to a sealed letter or package though nothing obscene appears on the envelope or wrapper. *United States v. Chase*, 135 U. S. 255, 34 L. ed. 117; *Grimm v. United*

States, 156 Id. 604, 39 L. ed. 550; *Andrews v. United States*, 162 Id. 420, 424, 40 L. ed. 1023; *United States v. Gaylord*, 17 F. R. 438, 50 Id. 410, 11 Biss. 438; *United States v. Hanover*, 17 F. R. 444; *United States v. Britton*, Id. 731; *United States v. Morris*, 18 Id. 900, 9 Sawy. 439, overruling *United States v. Loftis*, 12 F. R. 671, 8 Sawy. 194; *United States v. Thomas*, 27 F. R. 682; *United States v. Huggett*, 40 Id. 636; *In re Wahll*, 42 Id. 822; *United States v. Clark*, 43 Id. 574; *United States v. Martin*, 50 Id. 918; *United States v. Wilson*, 58 Id. 768; *United States v. Andrews*, Id. 861; *United States v. Warner*, 59 Id. 355; *United States v. Jarvis*, Id. 357; *United States v. Ling*, 61 Id. 1001; *United States v. Nathan*, Id. 936; *Thomas v. State*, 103 Ind. 419; *United States v. Foote*, 13 Blatch. 418, 25 Fed. Cas. 1140. See *contra* under a former wording of the statute, *United States v. Comerford*, 25 F. R. 902; *United States v. Mathias*, 36 Id. 892; *United States v. Williams*, 3 Id. 484; see also *United States v. Wightman*, 29 F. R. 636; *United States v. Bebout*, 28 Id. 522; *United States v. Kaltmeyer*, 16 Id. 760. But it has been held that evidence of the contents of sealed letters must be obtained otherwise than by opening them unless a search warrant is obtained. *Ex parte Jackson*, 96 U. S. 727, 24 L. ed. 877, 14 Blatch. 245, 13 Fed. Cas. 194; 16 A. G. Op. 5. This section applies to a clearly implied immoral proposal though the words used are decent. *United States v. Moore*, 129 F. R. 159; *United States v. Lamkin*, 73 Id. 459; *contra*, *United States v. Martin*, 50 Id. 918. The fact that part only of the inclosure is obscene is no defense. *United States v. Harman*, 38 F. R. 827; *United States v. Grimm*, 50 Id. 528, 156 U. S. 604, 39 L. ed. 550. This section does not apply to matter which is merely profane, coarse, or vulgar, or even libelous. *Swearingen v. United States*, 161 U. S. 446, 40 L. ed. 765; *United States v. Smith*, 11 F. R. 663; *Ex parte Doran*, 32 Id. 76.

Obscene  
matter un-  
available

Obscene  
matter un-  
mailable

This section applies to a quack medical advertisement of articles for procuring abortion or preventing conception. *United States v. Kelly*, 3 Sawy. 566, 26 Fed. Cas. 695; *Bates v. United States*, 11 Biss. 70, 10 F. R. 92 and note. The words designed or intended for preventing conception, etc., simply describe the article made contraband in the mails, and include any article or thing designed in a manner calculated to secure its use by any one, for the purpose of preventing conception or procuring abortion regardless of whether it would in fact accomplish the result. *United States v. Bott*, 11 Blatch. 346, 24 Fed. Cas. 204; *Bates v. United States*, 11 Biss. 70, 10 F. R. 92. Congress has power to provide in this respect only for the protection of the mails and not to legislate for the prevention of abortion in the States. *United States v. Bott*, 11 Blatch. 346, 24 Fed. Cas. 1204.

This section does not prohibit publication, or transportation in any other way, as merchandise; or relate to motives, or the truth of the published matter. *United States v. Bebout*, *supra*; *Von Cotzhausen v. Nazro*, 11 Biss. 44, 15 F. R. 891, 899, 25 Int. Rev. Rec. 342; 12 A. G. Op. 399, 538. The fact that the obscene papers were sent through the mail in the real or supposed interest of science, philosophy, or morality is immaterial. *United States v. Slenker*, 32 F. R. 691.

"*Notice.*" A letter inclosed in a sealed envelope, or a written slip of paper without address or signature, if it gives the prohibited information, is a "*notice*" within the meaning of this section. That it was not volunteered, but sent in reply to a letter asking for the information, is immaterial. *United States v. Foote*, 13 Blatch. 418, 25 Fed. Cas. 1140. It is not necessary that the writing should describe the objectionable matter advertised or be objectionable on its face. *De Gignac v. United States*, 113 F. R. 197.

While it is for the court in the first instance to decide

whether a writing can be considered obscene, if there is any chance of a reasonable man so holding, the question must be submitted to the jury. *Dunlop v. United States*, 165 U. S. 486, 41 L. ed, 799; *Knowles v. United States*, 170 F. R. 409; *Konda v. United States*, 166 Id. 91; *United States v. Janes*, 74 Id. 545; *United States v. Males*, 51 Id. 41; *United States v. Durant*, 46 Id. 753; *United States v. Harmon*, 45 Id. 414; *United States v. Davis*, 38 Id. 326; *United States v. Clarke*, Id. 500.

Obscene  
matter un-  
available

*"Whoever."* A corporation publishing a newspaper may be punished hereunder. *United States v. N. Y. Herald Co.*, 159 F. R. 296. The fact that the addressee is the defendant's wife is no defense. *United States v. Musgrave*, 160 F. R. 700, and see *United States v. Boese*, 46 Id. 917. The fact that the article was mailed in reply to a "decoy" letter is no defense. *Grimm v. United States*, 156 U. S. 604, 610, 39 L. ed. 550; *Shepard v. United States*, 160 F. R. 584; *Bates v. United States*, 10 Id. 92 and note; *United States v. Bott*, 11 Blatch. 346, 24 Fed. Cas. 1204. *United States v. Moore*, 19 F. R. 39; *contra*, *United States v. Whittier*, 5 Dillon, 35, 28 Fed. Cas. 591; *United States v. Adams*, 59 F. R. 674.

*"Knowingly."* While knowledge of the character of the articles mailed is a necessary element of the offense, an indictment is sufficient which charges that the defendant did "knowingly deposit" obscene matter in the mails, etc., without further allegation that he knew it to be obscene. *United States v. Nathan*, 61 F. R. 936; *United States v. Clark*, 37 Id. 106; *contra*, *United States v. Reid*, 73 Id. 289.

*"Deposit or cause to be deposited."* It is immaterial whether the article ever reached any one. *United States v. Grimm*, 45 F. R. 558. But it is necessary to prove that the objectionable matter was actually in the mail. *Harvey v. United States*, 126 F. R. 357. The defendant is guilty though the actual mailing was done by his agent: *Bates v. United States*, 11 Biss. 70, 10 F. R. 92; or by his business partner



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mailable

with his knowledge and as part of the business, *Burton v. United States*, 142 F. R. 57. Writing obscene articles for a newspaper which the writer knows is sent through the mails is a violation hereof, though the writer may have nothing to do with the mailing. *Demolli v. United States*, 144 F. R. 363.

To warrant a conviction under it, it must be proved, 1st, that the defendant, or his agent, deposited, or caused to be deposited, the paper in question in the post-office for mailing; 2d, that the defendant knew of the objectionable matter in the paper; 3d, that the paper is indecent. *United States v. Bebout*, 28 F. R. 522. A mere confession unsupported by other evidence will not warrant a conviction. *United States v. Boese*, 46 F. R. 917. The evidence was held sufficient to warrant a conviction in *MacFadden v. United States*, 165 F. R. 51, and to constitute an indictable offense in *United States v. Benedict*, Id. 221.

*The indictment* must describe the non-mailable matter with sufficient exactness to enable a judgment to be pleaded in bar on a second prosecution. *United States v. Tubbs*, 94 F. R. 356. But if the defendant is reasonably informed of the crime charged, his rights are not infringed by the omission from the indictment of obscene matter alleged as not proper to be spread upon the records of the court. *Rosen v. United States*, 161 U. S. 29, 40, 40 L. ed. 606; *Price v. United States*, 165 Id. 311, 41 L. ed. 727; *Dunlop v. United States*, Id. 486, 41 L. ed. 799; *Rinker v. United States*, 151 F. R. 755; *Konda v. United States*, 166 Id. 91. An indictment for mailing letters giving information as to the obtaining of obscene books need not set out the books if it alleges that they are obscene, etc. *Shepard v. United States*, 160 F. R. 584. Where the obscene papers were not set out in the indictment, but the same were filed in the case, the description was held sufficient. *United States v. Clarke*, 40 F. R. 325. *Contra*, where there was no sufficient means of identifying the document in question, *United States v.*

Fuller, 72 Id. 771; *United States v. Harmon*, 34 Id. 872; *United States v. Reid*, 73 Id. 289. **Obscene matter un-mailable**

An indictment is not double because it alleges that a circular is nonmailable both because it was in itself obscene and because it gave information where an obscene book might be obtained. *Burton v. United States*, 142 F. R. 57. The same is true of one charging that the letter gave information as to obtaining articles "for the prevention of conception and for the procuring of abortion." *Lee v. United States*, 156 F. R. 948. Such an indictment need not disclose what the particular "article or thing" is. *Id.*; *United States v. Somers*, 164 F. R. 259; *contra*, *United States v. Pupke*, 133 Id. 243. It is necessary to charge the character of the publication and that the defendant knew the contents. *United States v. Clifford*, 104 F. R. 296. Where the language used appears unobjectionable on its face, it must be alleged how it conveyed the forbidden information. *United States v. Grimm*, 45 F. R. 558. It is not necessary to allege that the letter was inclosed in an envelope or wrapper. *United States v. Harris*, 122 F. R. 551. An indictment was held defective which contained an allegation that the papers were deposited "for mailing and delivery," but none that they were addressed or that any directions were given for mailing or delivery. *United States v. Brazeau*, 78 F. R. 464.

Unlawful detention of a letter is a conversion, for which trover lies against the postmaster. *Teal v. Felton*, 12 How. 284. Accusing one of a violation of this section is slander *per se*. *Halstead v. Nelson*, 36 Hun, 149.

SECTION 212. All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, obscene, libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, may be written or printed or otherwise impressed or **Libelous and indecent matter on wrappers or envelopes**

Libelous  
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apparent, are hereby declared nonmailable matter, and shall not be conveyed in the mails nor delivered from any post-office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postmaster-General shall prescribe. Whoever shall knowingly deposit or cause to be deposited, for mailing or delivery, anything declared by this section to be nonmailable matter, or shall knowingly take the same or cause the same to be taken from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

This section is the same as the Act of Sept. 26, 1888, c. 1039, § 1 (25 St. 496). See the Act of June 18, 1888, c. 394 (25 St. 187).

See notes to § 211. *United States v. Loftis*, 12 F. R. 671, 672; *United States v. Barber*, 37 Id. 55; *United States v. Nathan*, 61 Id. 936.

*"Envelope or outside cover, etc."* The outside page of a paper or pamphlet which is mailed unwrapped is the "*outside cover*." *United States v. Burnell*, 75 F. R. 824; *contra*, *United States v. Gee*, 45 Id. 194. The objectionable language, etc., must appear on the outside of the mailed matter, and sending threatening or even obscene language *inside* of a sealed letter is not a violation of this section. *United States v. Durant*, 46 F. R. 753.

A black envelope printed with white ink, known by the postal employees to mean a certain type of dunning letter, is a "*delineation*." *United States v. Dodge*, 70 F. R. 235. Threatening or scurrilous language was not originally prohibited. *Ex parte Doran*, 32 F. R. 76. In *United States v. Davis*, 38 F. R. 326, certain unreported language was held sufficiently obscene and defamatory to warrant a verdict of guilty. See also *United States v. Olney*, Id. 328, where the question was left to the jury.

*"Calculated . . . to reflect injuriously."* An address, "Room 32, Pease House, Front St., City, The Notorious,"

is not defamatory *per se* and is not calculated to reflect injuriously on any one. *United States v. Jarvis*, 59 F. R. 357. A postal card stating that the addressee's account is long overdue and requesting immediate payment is no violation hereof. *United States v. Bayle*, 40 F. R. 664. But a threat of suit (*United States v. Smith*, 69 F. R. 971), or that the account will be placed in the hands of a lawyer or of a collection agency (*United States v. Bayle*, 40 F. R. 664; *contra*, *United States v. Elliott*, 51 Id. 807), or a "warning" to traders not to give credit to a certain person is. *United States v. Burnell*, 75 F. R. 824. An envelope on which the words "Excelsior Collection Agency" in large capitals occupied one-half the space is nonmailable. *United States v. Brown*, 43 F. R. 135. But where the words "Mercantile Protection and Collection Bureau" appeared in less prominent type than the rest of the name and address of the sender of which they formed part, it was held there was no violation. *In re Barber*, 75 F. R. 980.

**Libelous and indecent matter on wrappers or envelopes**

The right of the Postmaster-General to declare matter nonmailable cannot be reviewed by the court unless he acts maliciously, fraudulently, or in excess of his authority. *Davis v. Brown*, 103 F. R. 909. As to prior legislation on this subject, see *United States v. Smith*, 11 F. R. 663.

SECTION 213. No letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance; and no lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance; and no check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or chance in any such lottery, gift enterprise, or scheme; and no newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon

**Lottery, gift enterprise, etc., circulars, not mailable**

Lottery,  
gift enter-  
prise, etc.,  
circulars,  
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lot or chance, or containing any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be deposited in or carried by the mails of the United States, or be delivered by any postmaster or letter carrier. Whoever shall knowingly deposit or cause to be deposited, or shall knowingly send or cause to be sent, anything to be conveyed or delivered by mail in violation of the provisions of this section, or shall knowingly deliver or cause to be delivered by mail anything herein forbidden to be carried by mail, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years. Any person violating any provision of this section may be tried and punished either in the district in which the unlawful matter or publication was mailed, or to which it was carried by mail for delivery according to the direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed.

This section is taken from U. S. Rev. Sts. § 3894, and the Acts of Sept. 19, 1890, c. 908, § 1 (26 St. 465), and March 2, 1895, c. 191 (28 St. 963). It is considerably enlarged.

See notes to §§ 215, 237. Lottery Case, 188 U. S. 321, 354, 47 L. ed. 492; *United States v. Patty*, 2 F. R. 664; 20 A. G. Op. 748; 21 Id. 4, 171; *Roselle v. Farmers' Bank*, 141 Mo. 36, 41.

This section is constitutional. *Ex parte Jackson*, 96 U. S. 727, 24 L. ed. 877, 14 Blatch. 245; *In re Rapier*, 143 U. S. 110, 133, 36 L. ed. 93; *Horner v. United States*, Id. 207, 36 L. ed. 126; 17 A. G. Op. 77, 79; 18 Id. 306. Under it a lottery ticket is not a "letter"; but a schedule printed on the back of such ticket, stating the prizes offered, is a "circular." *United States v. Clark*, 22 F. R. 708. Thus an offer by mail of city bonds, with prizes, may be a circular. *United States v. Zeisler*, 30 F. R. 499. As to sealed letters, see *Ex parte Jackson*, 96 U. S. 727, 24 L. ed. 877, 14 Blatch. 245.

"Concerning" does not necessarily mean "in aid of."

United States *v.* Fulkerson, 74 F. R. 631. This section applies, however, only to the use of the mails by lottery dealers and others, for purposes of deception, and not to citizens who send them letters enclosing funds to buy lottery tickets. United States *v.* Mason, 22 F. R. 707; Commerford *v.* Thompson, 1 Id. 417, 2 Flippin, 611; United States *v.* Noelke, 17 Blatch. 554, 1 F. R. 426; United States *v.* Stickle, 15 Id. 798. It applies to letters or circulars sent in reply to decoy letters written by a detective. United States *v.* Moore, 19 F. R. 39; United States *v.* Duff, 19 Blatch. 9, 6 F. R. 45. The documents need not show on their face that they concern a lottery. United States *v.* Fulkerson, 74 F. R. 631. An advertisement of a machine to be used for lottery purposes is not prohibited. 22 A. G. Op. 198.

Lottery,  
gift enter-  
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*"Lottery, gift enterprise, or similar scheme."* This applies whether the lottery is legal or illegal: 15 A. G. Op. 203; or fraudulent, MacDaniel *v.* United States, 87 F. R. 324, 171 U. S. 689; 43 L. ed. 685. But the use of the mails simply to defraud is not prohibited by this section. United States *v.* Sauer, 88 F. R. 249. It applies to bonds of the Austrian government payable by drawings. Horner *v.* United States, 143 U. S. 570, 36 L. ed. 266, 147 Id. 449, 37 L. ed. 237; United States *v.* Politzer, 59 F. R. 273; United States *v.* Wallis, 58 Id. 942. It applies to schemes calling for regular payments on the part of the subscriber for a definite or uncertain period in return for which he is to receive a sum, the amount or time of payment of which is to depend upon some uncertain factor such as the number of his subscription or the then number of subscribers. Fitzsimmons *v.* United States, 156 F. R. 477; United States *v.* Fulkerson, 74 Id. 619; MacDonald *v.* United States, 63 Id. 426; 24 A. G. Op. 564; see also Public Clearing House *v.* Coyne, 194 U. S. 497, 40 L. ed. 1092; McLanahan *v.* Mott, 73 Hun, 131, 136. A contest where prizes are offered to persons making the nearest guess on some figure which can be determined with

Lottery,  
gift enter-  
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mathematical exactness, such as the majority to be received by a candidate at an election (19 A. G. Op. 679; 23 Id. 207), or the number of admissions to an exposition (23 Id. 492), or the number of cigarettes upon which a tax will be paid during a certain month (United States v. Rosenblum, 121 F. R. 180), has been held not dependent upon "*lot or chance*." But see *contra*, a more recent opinion of the Attorney-General, 25 A. G. Op. 286; see also People v. Lavin, 179 N. Y. 164. Certain endless-chain devices for the purchase of goods are considered nonmailable. 23 A. G. Op. 200, 260. As to what constitutes a lottery, see also Kohn v. Koehler, 96 N. Y. 362; Hall v. Ruggles, 56 Id. 424; People v. Noelke, 94 Id. 137; State v. Lumsden, 89 N. C. 572. A duplicate slip retained by the lottery is not a "certificate or instrument." Francis v. United States, 188 U. S. 375, 47 L. ed. 508.

The indictment must allege the existence of a lottery or gift enterprise, etc. United States v. Irvine, 156 F. R. 376; United States v. Bailey, 47 Id. 117. It need not set out in detail the facts showing the enterprise to be a lottery. United States v. Fulkerson, 74 F. R. 631; United States v. Conrad, 59 Id. 458; *contra*, United States v. MacDonald, 65 Id. 486. Evidence is admissible to show that a scheme charged in the indictment to be a lottery is one. MacDonald v. United States, 63 F. R. 426. The indictment need not allege the payment of postage on the article. United States v. Lynch, 49 F. R. 851.

"*Sending anything to be conveyed*" relates not to sending to the post-office, but to knowingly forwarding or causing to be forwarded through the mail. United States v. Dauphin, 20 F. R. 625; United States v. Parsons, 2 Blatch. 104, 27 Fed. Cas. 451. The clause "*delivered by mail*" makes the offense triable in the district where the mailed matter is delivered. *In re* Palliser, 136 U. S. 257, 34 L. ed. 514; Horner v. United States, 143 U. S. 207, 36 L. ed. 126, 44 F. R. 677;

see *United States v. Lynch*, 49 F. R. 851. The Postmaster-General may not detain letters *suspected* to contain advertisements of lotteries. 16 A. G. Op. 5. As to articles imported by mail from foreign countries see S. T. D. (1894) p. 275; *Id.* (1897) p. 969.

**Lottery, gift enterprise, etc., circulars, not mailable**

SECTION 214. Whoever, being a postmaster or other person employed in the postal service, shall act as agent for any lottery office, or under color of purchase or otherwise, vend lottery tickets, or shall knowingly send by mail or deliver any letter, package, postal card, circular, or pamphlet advertising any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any ticket, certificate, or instrument representing any chance, share, or interest in or dependent upon the event of any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes awarded by means of any such scheme, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both.

**Official acting as lottery agent**

This section is founded on U. S. Rev. Sts. § 3851, but is greatly enlarged. The *Louisiana Lottery Cases*, 20 F. R. 625, 628.

SECTION 215. Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the "saw-dust swindle," or "counterfeit-money fraud," or by dealing or pretending to deal in what is commonly called "green articles," "green coin," "green goods," "bills," "paper goods," "spurious Treasury notes," "United States goods," "green cigars," or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the

**Using mails to promote frauds**



**Using mails to promote frauds** purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post-office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

This section is founded on U. S. Rev. Sts. § 5480, and the Act of March 2, 1889, c. 393, § 1 (25 St. 873), but is greatly enlarged.

See note to § 213. *Barrett v. United States*, 169 U. S. 218, 42 L. ed. 723; *In re De Bara*, 179 Id. 316, 45 L. ed. 207; *Brand v. United States*, 18 Blatch. 384, 4 F. R. 394; also *United States v. Thomas*, 27 F. R. 682; *United States v. McMillan*, 29 Id. 247; *United States v. Haynes*, Id. 691; *United States v. Huggett*, 40 Id. 636, 642; *United States v. Reid*, 42 Id. 134; *United States v. Finney*, 45 Id. 41; *United States v. Staples*, Id. 195; *United States v. Smith*, Id. 561; *In re Sanborn*, 52 Id. 583; *United States v. Harris*, 68 Id. 347; *United States v. Long*, Id. 348, *Howard v. United States*, 75 Id. 986; *United States v. Bernard*, 84 Id. 634; *Tingle v. United States*, 87 Id. 320; *Packer v. United States*, 106 Id. 906; *Larkin v. United States*, 107 Id. 697; *Milby v. United States*, 109 Id. 638; *United States v. Post*, 113 Id. 852; *Hume v. United States*, 118 Id. 689; *Stewart v. United States*, 119 Id. 89; *O'Neil v. United States*, 120 Id. 236; *Melton v. United States*, Id. 504; *United States v. Clark*, 125 Id. 92; *Kellogg v. United States*, 126 Id. 323; *Hanley v. United States*, Id.

944; *Dalton v. United States*, 127 Id. 544; *McDonnell v. United States*, 133 Id. 293; *Booth v. United States*, 139 Id. 252; *United States v. Francis*, 144 Id. 520; *United States v. Marrin*, 159 Id. 767; *Doyle v. United States*, 169 Id. 625; *Robinson v. United States*, 172 Id. 105; *Bass v. United States*, 20 App. D. C. 232; *Webster v. Fowler*, 89 Mich. 303, 311.

Using mails  
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To make out an offense under this section, three matters of fact must be charged in the indictment and established by the proof: (1) That a scheme or artifice to defraud has been devised by the defendant; (2) that such scheme or artifice to defraud was to be effected by correspondence with another person by means of the post-office establishment of the United States, or by inciting such other person to open communication with the defendant; (3) that for the purpose of executing such a scheme or artifice or attempting so to do, the defendant placed a letter or packet in a post-office of the United States or has taken or received a letter or packet therefrom. *Stokes v. United States*, 157 U. S. 187, 39 L. ed. 667; *Durland v. United States*, 161 Id. 306, 40 L. ed. 709; *United States v. Flemming*, 18 F. R. 907; *United States v. Wootten*, 29 Id. 702; *United States v. Hoeflinger*, 33 Id. 469, 38 Alb. L. J. 18; *Brown v. United States*, 143 F. R. 60; *United States v. Dexter*, 154 Id. 890; *United States v. Smith*, 166 Id. 958.

*"Scheme or artifice to defraud."* This is not confined to the common-law offence of obtaining money under false pretenses; it is not necessary that there should be a misrepresentation of any existing fact. *Durland v. United States*, 161 U. S. 306, 40 L. ed. 709. See *United States v. Hoeflinger*, 33 F. R. 469, 38 Alb. L. J. 18. The intent to defraud is essential. *Hibbard v. United States*, 172 F. R. 66. An honest belief by the defendant in the truth of the statements is a defense. *Rudd v. United States*, 173 F. R. 912. The scheme to defraud need not be unlawful. *United States v. Loring*, 91 F. R. 881. The section "contemplates any scheme

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involving matters of enforceable or unenforceable contract, representation of facts, expression of opinions, or assurances of past, present or future conditions, provided only it was designed and reasonably adapted to deceive and defraud." *Brooks v. United States*, 146 F. R. 223. It relates to schemes to defraud in general. *United States v. Sauer*, 88 F. R. 249. The amendment of 1889 mentioning certain specific devices broadened the scope of this section. *Durland v. United States*, 161 U. S. 306, 40 L. ed. 709; *Culp v. United States*, 82 F. R. 990; *Milby v. United States*, 120 Id. 1; *Miller v. United States*, 133 Id. 337. It is not confined to schemes to defraud by the use of counterfeit money: *Lemon v. United States*, 164 F. R. 953; or to lotteries, *United States v. Watson*, 35 F. R. 358. It is not necessary that the scheme should be fraudulent on its face. *Rumble v. United States*, 143 F. R. 772; *United States v. Smith*, 166 Id. 958; *McConkey v. United States*, 171 Id. 829. The scheme must involve some plausible device reasonably calculated to deceive persons. *United States v. Fay*, 83 F. R. 839. A letter need not in itself be effective to execute the fraud. *Durland v. United States*, 161 U. S. 306, 40 L. ed. 709; *Lemon v. United States*, 164 F. R. 953; *Walker v. United States*, 152 Id. 111. It is no defense that the scheme is on its face impossible: *O'Hara v. United States*, 129 F. R. 551; or that no one is in fact defrauded. *Weeber v. United States*, 62 F. R. 740. Where the fraud was a fictitious matrimonial advertisement it is no defense that the defendant in fact afterwards put the person defrauded in communication with a woman whom he married. *Grey v. United States*, 172 F. R. 101. One may be convicted hereunder though the fraudulent scheme in which he participates may have originated with another. A person is guilty though the letter was placed in the post-office by another with fraudulent intent, if it was placed there by his direction. A clerk who knowingly aids his employer in his

fraudulent practices is equally a party. *United States v. Flemming*, 18 F. R. 907. Sending a letter calculated to induce the purchase of counterfeit money at a low price for the purpose of putting it off as genuine, is an offense though no intention was shown to defraud any particular person. *United States v. Jones*, 20 Blatch. 235, 10 F. R. 469, 13 Repr. 165. The gist of the offense is the abuse of the mail. The *corpus delicti* was the mailing of the letter in execution of the unlawful scheme, and this being shown it was competent to prove that the defendant was the sender of the letter by his admission to that effect. *Id.* Advertising under various titles for agents to sell goods and distribute circulars, without intending to employ such agents, but with the intention of inducing persons who saw such advertisements to remit postage stamps and money for outfits, and to appropriate them to the defendant's use, without giving an equivalent therefor, and in pursuance of this purpose taking a letter and packet from the post-office and depositing a packet in it, is an offense under this section. *United States v. Stickle*, 15 F. R. 798. A plan to cheat by ordering goods through the mail with the intention of not paying for them, under the false assertion that the persons mailing the orders are wholesale merchants, is also a fraudulent scheme within the statute. *United States v. Watson*, 35 F. R. 358. Selling bogus degrees of a law college not a *bona fide* institution is a scheme to defraud. *Farr v. Palmer*, 24 App. D. C. 234. So is a plan to extort money from another by threatening to publish charges against him unless a sum demanded is paid: *Horman v. United States*, 116 F. R. 350, affirming 118 *Id.* 780; or putting in force a boycott to enforce the payment of a fine: *United States v. Raish*, 163 F. R. 911; or offering to sell a half interest in a business with the intention of defrauding several persons at the same time: *Van Deusen v. United States*, 151 F. R. 989; or an offer to send an organ worth \$150 for \$33 with the intent to send one of much less

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value: *United States v. Beatty*, 60 F. R. 740; or a certain "mutual credit" scheme whereby those subscribing and making certain regular payments were to receive in return double the amount paid in: *Walker v. United States*, 152 F. R. 111; or an offer to sell counterfeit money with the intent not to send any money. *Milby v. United States*, 120 F. R. 1.

It was held not to be within this section where the defendant, a post-office employee, changed the date of the mailing stamp in the post-office so as to give a false post-mark to a letter enclosing an insurance assessment (*United States v. Mitchell*, 36 F. R. 492); for a debtor to enclose in a letter to his creditor worthless slips of paper, and write that such slips were sent in payment of an obligation or account, and send them through the mail (*United States v. Owens*, 5 McCrary, 307, 17 F. R. 72); for one not solvent to seek credit or order goods, though he be without the means of paying for them at the time. The intent not to pay for the goods ordered through the mail must exist before the order was mailed. And the statute does not take cognizance of an act devised for the purpose of escaping payment for goods, such act occurring after they were ordered. *United States v. Wootten*, 29 F. R. 702. The fact that some exaggerations occur in a circular sent out by a merchant as to his business and that he has failed to settle with some creditors is not sufficient to constitute a scheme to defraud, 157 F. R. 840. False representations made by the officers of a company with regard to its future business for the sake of selling a stock issue will not support a conviction hereunder where it does not appear that the stock is not worth what was paid for it. *Miller v. United States*, 174 F. R. 35.

It is no defense that some correspondents would think the scheme a lottery and that others would think it a legitimate business investment, and an indictment is not double because it charges both. *Gourdain v. United States*, 154

F. R. 453; *Dalton v. United States*, Id. 461. Where the alleged scheme was an offer to impart instructions as to obtaining supernatural powers, or to send a horoscope, the good or bad faith of the defendant was held material. *United States v. White*, 150 F. R. 379. The same is true where the defendant advertised to practice mental healing. *Post v. United States*, 135 F. R. 1, 128 Id. 950. Where the scheme charged was one to sell counterfeit obligations of the United States, an intent to defraud need not be shown. *Streep v. United States*, 160 U. S. 128, 40 L. ed. 365. Letters between parties to the fraud giving information to one another are not prohibited here. *United States v. Ryan*, 123 F. R. 634. The offense is not complete without intended gain to the accused. *United States v. Beach*, 71 F. R. 160; *United States v. Fay*, 83 Id. 839.

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The *use of the mails* must be an essential part of the scheme: *United States v. Clark*, 121 F. R. 190; *United States v. McCrory*, 175 Id. 802; but it need be only one step. *Weeber v. United States*, 62 Id. 740. It is no offense if the defendant intends to open a correspondence with himself. *Erbaugh v. United States*, 173 F. R. 433. A railway postal car used and designated as a railway post-office for the receiving and distributing of mail is a branch post-office. *Hanley v. United States*, 123 F. R. 849. Each mailing constitutes a separate offense hereunder. *Francis v. United States*, 152 F. R. 155.

This is an "infamous crime." *Stokes v. United States*, 60 F. R. 597. It is now apparently a felony, see § 335, though formerly a misdemeanor. *United States v. Stickle*, 15 F. R. 798.

*The indictment.* On the former provision of this section as to the joinder of offences occurring within six months see *Re Henry*, 123 U. S. 372, 31 L. ed. 174; *United States v. Nye*, 4 F. R. 888; *United States v. Martin*, 28 Id. 812; *Re Haynes*, 30 Id. 767; *DeBara v. United States*, 99 Id. 942;

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to promote  
frauds**

Hanley *v.* United States, 127 Id. 929; Betts *v.* United States, 132 Id. 228; Hall *v.* United States, 152 Id. 420; Walker *v.* United States, Id. 111; Booth *v.* United States, 154 Id. 836; United States *v.* McVickar, 164 Id. 894. The offense may be charged in the general language of the statute, but the description must be accompanied by a statement of all the particulars essential to constitute the offense or crime, and to acquaint the accused with the nature of the charge. United States *v.* Hess, 124 U. S. 483, 31 L. ed. 516. The nature of the scheme must be set out. Dalton *v.* United States, 127 F. R. 544. It is sufficient, however, if the description has enough detail to acquaint the accused with what he is required to meet. Lemon *v.* United States, 164 F. R. 953; United States *v.* Hoeflinger, 33 F. R. 469, 38 Alb. L. J. 18. The names and addresses of persons intended to be defrauded need not be set out if they are unknown. Durland *v.* United States, 161 U. S. 306, 40 L. ed. 709. A count charging "dealing and pretending to deal" in what is called "green articles" and "spurious Treasury notes" is not bad for repugnancy. Lehman *v.* United States, 127 F. R. 41.

*The proof.* The evidence must show the scheme charged in the indictment and not some different scheme. Flackskamm *v.* United States, 127 F. R. 674; Beck *v.* United States, 145 Id. 625; Brown *v.* United States, 146 Id. 219. Evidence that the defendant sent through the mails letters other than those mentioned in the indictment is admissible as bearing on his intent. United States *v.* Dexter, 154 F. R. 890. Such letters may be introduced in evidence to show the scheme charged. Rumble *v.* United States, 143 F. R. 772; Balliet *v.* United States, 129 Id. 689.

**Using  
fraudulent  
fictitious  
address**

SECTION 216. Whoever, for the purpose of conducting, promoting, or carrying on, in any manner, by means of the post-office establishment of the United States, any scheme or device mentioned in the section last preceding, or any other

unlawful business whatsoever, shall use or assume, or request to be addressed by, any fictitious, false, or assumed title, name, or address, or name other than his own proper name, or shall take or receive from any post-office of the United States, or station thereof, or any other authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be punished as provided in the section last preceding.

Using  
fraudulent  
fictitious  
address

This section is the same as the Act of March 2, 1889, c. 393, § 2 (25 St. 873), except that the words "or station thereof, or any other authorized depository of mail matter," are inserted, and the words "package or other mail matter" are substituted for "or packet," and the words "lawful and" are stricken out.

See note to § 215. As in § 215 the scheme to defraud must contemplate the use of the mails. *United States v. Smith*, 45 F. R. 561. The indictment must set out the scheme to defraud as fully as though it were drawn under § 215. *United States v. Etheredge*, 140 F. R. 376. An unexecuted scheme is not a "*business*." *United States v. Smith*, 45 F. R. 561. A lottery is an "*unlawful business*." *MacDaniel v. United States*, 87 F. R. 324. The defendant cannot be convicted if he is aiding a real person of the name used. *Tingle v. United States*, 87 F. R. 320.

SECTION 217. All kinds of poison, and all articles and compositions containing poison, and all poisonous animals, insects, and reptiles, and explosives of all kinds, and inflammable materials, and infernal machines, and mechanical, chemical, or other devices or compositions which may ignite or explode, and all disease germs or scabs, and all other natural or artificial articles, compositions, or materials of whatever kind which may kill, or in any wise hurt, harm, or injure another, or damage, deface, or otherwise injure the mails or other property, whether sealed as first-class matter or not, are hereby declared to be nonmailable matter, and shall not be conveyed in the mails or delivered from any post-office or station thereof, nor by any letter carrier; but the

Poisons, ex-  
plosives,  
etc., not  
mailable



**Poisons, explosives, etc., not mailable**

Postmaster-General may permit the transmission in the mails, under such rules and regulations as he shall prescribe as to preparation and packing, of any articles hereinbefore described which are not outwardly or of their own force dangerous or injurious to life, health, or property: *Provided*, That all spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind, are hereby declared to be nonmailable and shall not be deposited in or carried through the mails. Whoever shall knowingly deposit or cause to be deposited for mailing or delivery, or shall knowingly cause to be delivered by mail according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared by this section to be nonmailable, unless in accordance with the rules and regulations hereby authorized to be prescribed by the Postmaster-General, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both; and whoever shall knowingly deposit or cause to be deposited for mailing or delivery, or shall knowingly cause to be delivered by mail according to the direction thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, anything declared by this section to be nonmailable, whether transmitted in accordance with the rules and regulations authorized to be prescribed by the Postmaster-General or not, with the design, intent, or purpose to kill, or in anywise hurt, harm, or injure another, or damage, deface, or otherwise injure the mails or other property, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

This section is founded on U. S. Rev. Sts. § 3878, and the Acts of March 3, 1879, c. 180, § 20 (20 St. 360), and June 8, 1896, c. 370 (29 St. 262), with some changes.

**Counterfeiting, etc., money orders**

SECTION 218. Whoever, with intent to defraud, shall falsely make, forge, counterfeit, engrave, or print, or cause or procure to be falsely made, forged, counterfeited, engraved, or printed, or shall willingly aid or assist in falsely making, forging, counterfeiting, engraving, or printing, any order in imitation of or purporting to be a money order issued by the Post-Office Department, or by any postmaster or agent thereof; or whoever shall forge or counterfeit the signature of any postmaster, assistant postmaster, chief clerk, or clerk, upon or to any money order, or postal note, or blank therefor

provided or issued by or under the direction of the Post-Office Department of the United States, or of any foreign country, and payable in the United States, or any material signature or indorsement thereon, or any material signature to any receipt or certificate of identification thereon; or shall falsely alter, or cause or procure to be falsely altered in any material respect, or knowingly aid or assist in falsely so altering any such money order or postal note; or shall, with intent to defraud, pass, utter, or publish any such forged or altered money order or postal note, knowing any material signature or indorsement thereon to be false, forged, or counterfeited, or any material alteration therein to have been falsely made; or shall issue any money order or postal note without having previously received or paid the full amount of money payable therefor, with the purpose of fraudulently obtaining or receiving, or fraudulently enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any officer, employee, or agent thereof, any sum of money whatever; or shall, with intent to defraud the United States, or any person, transmit or present to, or cause or procure to be transmitted or presented to, any officer or employee, or at any office of the Government of the United States, any money order or postal note, knowing the same to contain any forged or counterfeited signature to the same, or to any material indorsement, receipt, or certificate thereon, or material alteration therein unlawfully made, or to have been unlawfully issued without previous payment of the amount required to be paid upon such issue, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Counterfeit-  
ing, etc.,  
money  
orders

This section is founded on U. S. Rev. Sts. § 5463, and the Act of June 18, 1888, c. 394, § 2 (25 St. 187), but is considerably enlarged.

United States *v.* Crecilius, 34 F. R. 30; United States *v.* Pelletreau, 14 Blatch. 126, 27 Fed. Cas. 485. Where a postmaster issued a postal money-order on the application of a fictitious person, without consideration, payable to a bank, to which he at the same time wrote in the name of the fictitious person, directing that the amount of the order be collected and remitted to him at a certain place in a registered package, and he intercepted this as it passed

**Counterfeit-  
ing, etc.,  
money  
orders**

through an intermediate office, and converted to his own use the contents thereof, he was held to have committed forgery both at common law and under the statute. *Ex parte* Hibbs, 11 Sawyer, 452, 26 F. R. 421. If the forgery of a postal order would defraud any person, there may be a conviction, although the evidence does not show an intent on the part of the accused to defraud that particular person. The crime of forgery may be committed if one fraudulently signs his own name, it being the same as the name of him who should have signed. *United States v. Long*, 30 F. R. 678. And an indictment under this section, which charges one with having forged a material indorsement on a post-office money-order, with intent to defraud another person, charges an offense against the United States. *United States v. Morris*, 16 Blatch. 133, 26 Fed. Cas. 1321.

**Counter-  
feiting,  
etc., post-  
age stamps**

SECTION 219. Whoever shall forge or counterfeit any postage stamp, or any stamp printed upon any stamped envelope, or postal card, or any die, plate, or engraving therefor; or shall make or print, or knowingly use or sell, or have in possession with intent to use or sell, any such forged or counterfeited postage stamp, stamped envelope, postal card, die, plate, or engraving; or shall make, or knowingly use or sell, or have in possession with intent to use or sell, any paper bearing the watermark of any stamped envelope, or postal card, or any fraudulent imitation thereof; or shall make or print, or authorize or procure to be made or printed, any postage stamp, stamped envelope, or postal card, of the kind authorized and provided by the Post-Office Department, without the special authority and direction of said department; or shall, after such postage stamp, stamped envelope, or postal card has been printed, with intent to defraud, deliver the same to any person not authorized by an instrument in writing, duly executed under the hand of the Postmaster-General and the seal of the Post-Office Department, to receive it, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both.

This section is the same as U. S. Rev. Sts. § 5464, except that the words "the postal revenue" after "defraud" are

omitted. *United States v. Pelletreau*, 14 Blatch. 126, 27 Fed. Cas. 485; *United States v. Coppersmith*, 4 F. R. 198, 10 Repr. 517. **Counterfeiting, etc., postage stamps**

SECTION 220. Whoever shall forge, or counterfeit, or knowingly utter or use any forged or counterfeited postage stamp of any foreign government, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both. **Counterfeiting, etc., foreign stamps**

This section is the same as U. S. Rev. Sts. § 5465, except a change in the punishment.

SECTION 221. Matter of the second, third, or fourth class containing any writing or printing in addition to the original matter, other than as authorized by law, shall not be admitted to the mails, nor delivered, except upon payment of postage for matter of the first class, deducting therefrom any amount which may have been prepaid by stamps affixed, unless by direction of the Postmaster-General such postage shall be remitted. Whoever shall knowingly conceal or inclose any matter of a higher class in that of a lower class, and deposit or cause the same to be deposited for conveyance by mail, at a less rate than would be charged for such higher class matter, shall be fined not more than one hundred dollars. **Inclosing higher in lower class matter**

This section is founded on U. S. Rev. Sts. § 3887, and the Act of Jan. 20, 1888, c. 2, § 2 (25 St. 2), with a number of changes.

SECTION 222. Whoever, being a postmaster, shall affix his signature to the approval of any bond of a bidder, or to the certificate of sufficiency of sureties in any contract, before the said bond or contract is signed by the bidder or contractor and his sureties, or shall knowingly, or without the exercise of due diligence, approve any bond of a bidder with insufficient sureties, or shall knowingly make any false or fraudulent certificate, shall be forthwith dismissed from office and be thereafter disqualified from holding the office of postmaster; and shall also be fined not more than five thousand dollars, or imprisoned not more than one year, or both. **Postmaster illegally approving bond, etc.**

This section is founded on U. S. Rev. Sts. § 3947, and the Act of June 23, 1874, c. 456, § 12 (247) (18 St. 235).

**Submitting  
false evi-  
dence as to  
second-class  
matter**

SECTION 223. Whoever shall knowingly submit or cause to be submitted to any postmaster or to the Post-Office Department or any officer of the postal service, any false evidence relative to any publication for the purpose of securing the admission thereof at the second-class rate, for transportation in the mails, shall be fined not more than five hundred dollars.

This section is the same as the Act of March 2, 1905, c. 1304 (33 St. 823), except that there is a slight change in the punishment. See also the Act of June 18, 1888, c. 394, § 1 (25 St. 187).

**Inducing or  
prosecuting  
claims for  
losses**

SECTION 224. Whoever shall make, allege, or present, or cause to be made, alleged, or presented, or assist, aid, or abet in making, alleging, or presenting, any claim or application for indemnity for the loss of any registered letter, parcel, package, or other article or matter, or the contents thereof, knowing such claim or application to be false, fictitious, or fraudulent; or whoever for the purpose of obtaining or aiding to obtain the payment or approval of any such claim or application, shall make or use, or cause to be made or used, any false statement, certificate, affidavit, or deposition; or whoever shall knowingly and willfully misrepresent, or misstate, or, for the purpose aforesaid shall knowingly and willfully conceal any material fact or circumstance in respect of any such claim or application for indemnity, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

This section is new.

**Misappropriating  
postal funds  
or property**

SECTION 225. Whoever, being a postmaster or other person employed in or connected with any branch of the postal service, shall loan, use, pledge, hypothecate, or convert to his own use, or shall deposit in any bank, or exchange for other funds or property, except as authorized by law, any money or property coming into his hands or under his control in any manner whatever, in the execution or under color of his office, employment, or service, whether the same shall be the money or property of the United States or not; or shall fail or refuse to remit to or deposit in the Treasury of the United States or in a designated depository, or to account for or turn over to the proper officer or agent, any such money or property, when required so to do by law or the regulations

of the Post-Office Department, or upon demand or order of the Postmaster-General, either directly or through a duly authorized officer or agent, shall be deemed guilty of embezzlement; and every such person, as well as every other person advising or knowingly participating therein, shall be fined in a sum equal to the amount or value of the money or property embezzled, or imprisoned not more than ten years, or both. Any failure to produce or to pay over any such money or property, when required so to do as above provided, shall be taken to be *prima facie* evidence of such embezzlement; and upon the trial of any indictment against any person for such embezzlement, it shall be *prima facie* evidence of a balance against him to produce a transcript from the account books of the Auditor for the Post-Office Department. But nothing herein shall be construed to prohibit any postmaster depositing, under the direction of the Postmaster-General, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as postmaster, any funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers, or otherwise, when instructed or required so to do by the Postmaster-General, for the purpose of remitting surplus funds from one post-office to another.

**Misappropriating postal funds or property**

This section is taken from U. S. Rev. Sts. §§ 4046, 4053, but is enlarged.

*Whitworth v. United States*, 114 F. R. 302; *United States v. Young*, 25 Id. 710. Issuing a money order to pay his personal debts is an embezzlement of funds by a clerk. *United States v. Royer*, 122 F. R. 844. The money must have come into the hands of the defendant by virtue of his employment. *United States v. Allen*, 150 F. R. 152. The intent of a postmaster who issues a money order without receiving the money therefor to make up the amount later is no defense. *Vives v. United States*, 92 F. R. 355. Money received and receipted for by a rural carrier to be used in forwarding money orders is within this section. *United States v. Mann*, 160 F. R. 552. After a postmaster's term of office has expired, and his accounts have been allowed by the auditor, the accounts can be reopened for the

**Misappropriating postal funds or property**

purpose of charging him with a balance, only on clear evidence of fraud. *United States v. Hutcheson*, 39 F. R. 540; *United States v. Miller*, 8 Utah, 29. As to the punishment under former wording of the statute, see *Woodruff v. United States*, 58 F. R. 766, 68 Id. 536; *United States v. Swan*, 7 New Mex. 306, 310.

**Employees interested in mail contracts**

SECTION 226. Whoever, being a person employed in the postal service, shall become interested in any contract for carrying the mail, or act as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the Department, shall be immediately dismissed from office, and shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both.

This section is the same as U. S. Rev. Sts. § 412, except that the penalty of an action for debt is changed to fine or imprisonment or both. 24 A. G. Op. 557, 559.

**Fraudulent use of official envelopes**

SECTION 227. Whoever shall make use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined not more than three hundred dollars.

This section is taken from the Acts of Nov. 3, 1877, c. 103, § 5 (19 St. 335), March 3, 1879, c. 180, § 29 (20 St. 362), July 5, 1884, c. 234, § 3 (23 St. 158), and July 2, 1886, c. 611 (24 St. 122). There is a change in the punishment. 16 A. G. Op. 455; 25 Id. 354, 363. The *Monthly Bulletin* of the Bureau of American Republics is not within this section. 21 A. G. Op. 514. Where a member of Congress has made an inquiry of a Department about official business, the reply may be addressed to the party concerned in a penalty envelope and sent unsealed to the member, to be forwarded by him to its destination. 16 A. G. Op. 501.

**Fraudulently increasing weight of mail**

SECTION 228. Whoever shall place or cause to be placed any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mail, with intent to cause an increase in the compensation of the

railroad mail carrier over whose route such mail may pass, shall be fined not more than twenty thousand dollars, or imprisoned not more than five years, or both.

**Fraudul-  
lently in-  
creasing  
weight of  
mail**

This section is the same as the Act of June 13, 1898, c. 446, § 1 (30 St. 442), except a change in the punishment.

SECTION 229. Every foreign mail shall, while being transported across the territory of the United States under authority of law, be taken and deemed to be a mail of the United States so far as to make any violation thereof, or depredation thereon, or offense in respect thereto, or any part thereof, an offense of the same grade, and punishable in the same manner and to the same extent as though the mail was a mail of the United States; and in any indictment or information for any such offense, the mail, or any part thereof, may be alleged to be, and on the trial of any such indictment or information it shall be deemed and held to be, a mail or part of a mail of the United States.

**Offenses  
against  
foreign  
mail in  
transit**

This section is the same as U. S. Rev. Sts. § 4013, except that the words "or information" are inserted.

SECTION 230. Every person employed in the postal service shall be subject to all penalties and forfeitures for the violation of the laws relating to such service, whether he has taken the oath of office or not.

**Omission  
to take oath**

This section is the same as U. S. Rev. Sts. § 3832.

SECTION 231. The words "postal service," wherever used in this chapter, shall be held and deemed to include the "Post-Office Department."

**Definition**

This section is new.



## CHAPTER NINE

OFFENSES AGAINST FOREIGN AND INTERSTATE  
COMMERCE

| SECTION  | SECTION   |
|--|---|
| 232. Dynamite, etc., not to be carried on vessels or vehicles carrying passengers for hire | of to be made only to <i>bona fide</i> consignees.  |
| 233. Interstate Commerce Commission to make regulations for transportation of explosives   | 239. Common carrier, etc., not to collect purchase price of interstate shipment of intoxicating liquors |
| 234. Nitroglycerine, etc., not to be carried on certain vessels and vehicles               | 240. Packages containing intoxicating liquors shipped in interstate commerce to be marked as such.      |
| 235. Marking of packages of explosives; deceptive marking                                  | 241. Importation of certain wild animals and birds forbidden  |
| 236. Death or bodily injury caused by such transportation                                  | 242. Transportation of prohibited animals   |
| 237. Importation and transportation of lottery tickets, etc., forbidden                    | 243. Marking of packages  |
| 238. Interstate shipment of intoxicating liquors; delivery                                 | 244. Penalty for violation of three preceding sections  |
|  | 245. Importation and transportation of obscene, etc., books, etc.                                       |

**Explosives carried on vessels or vehicles with passengers for hire forbidden**

SECTION 232. It shall be unlawful to transport, carry, or convey, any dynamite, gunpowder, or other explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire: *Provided*, That it shall be lawful to transport on any such vessel or vehicle small arms, ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices, as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty

samples at one time in a single vessel or vehicle; but such samples shall not be carried in that part of a vessel or vehicle which is intended for the transportation of passengers for hire: *Provided further*, That nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels or vehicles.

**Explosives**  
carried on  
vessels or  
vehicles  
with pas-  
sengers for  
hire for-  
bidden

This section is taken from the Act of May 30, 1908, c. 234, § 1 (35 St. 554). See also U. S. Rev. Sts. §§ 4278, 5353. The Act of May 30, 1908, was repealed by § 341, *infra*. This section and §§ 233, 234, and 235, which follow, do not appear in the bill reported to Congress by the committee on revision.

*Bowman v. Chicago & Northwestern R. Co.*, 125 U. S. 465, 484, 31 L. ed. 700; *Leisy v. Hardin*, 135 Id. 100, 154, 34 L. ed. 128. Nitroglycerine has been held to include dynamite. *United States v. Saul*, 58 F. R. 763.

SECTION 233. The Interstate Commerce Commission shall formulate regulations for the safe transportation of explosives, which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives by land. Said commission, of its own motion, or upon application made by any interested party, may make changes or modifications in such regulations, made desirable by new information or altered conditions. Such regulations shall be in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport. Such regulations, as well as all changes or modifications thereof, shall take effect ninety days after their formulation and publication by said commission and shall be in effect until reversed, set aside, or modified.

**Regula-**  
tions for  
transport-  
ing explo-  
sives to be  
made by  
Interstate  
Commerce  
Commission

See § 232.

SECTION 234. It shall be unlawful to transport, carry, or convey liquid nitroglycerin, fulminate in bulk in dry condition, or other like explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in one State, Territory, or

**High explo-**  
sives ex-  
cluded from  
certain  
vessels or  
vehicles

**High explosives excluded from certain vessels or vehicles**

District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water.

See § 232.

**Marking packages of explosives**

SECTION 235. Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereof; and it shall be unlawful for any person to deliver, or cause to be delivered, to any common carrier engaged in interstate or foreign commerce by land or water, for interstate or foreign transportation, or to carry upon any vessel or vehicle engaged in interstate or foreign transportation, any explosive, or other dangerous article, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time such delivery or carriage is made. Whoever shall knowingly violate, or cause to be violated, any provision of this section, or of the three sections last preceding, or any regulation made by the Interstate Commerce Commission in pursuance thereof, shall be fined not more than two thousand dollars, or imprisoned not more than eighteen months, or both.

See § 232. See also U. S. Rev. Sts. §§ 5353-5355.

**Causing death or injury by illegal transportation**

SECTION 236. When the death or bodily injury of any person is caused by the explosion of any article named in the four sections last preceding, while the same is being placed upon any vessel or vehicle to be transported in violation thereof, or while the same is being so transported, or while the same is being removed from such vessel or vehicle, the person knowingly placing, or aiding or permitting the placing, of such articles upon any such vessel or vehicle, to be so transported, shall be imprisoned not more than ten years.

This section is taken from U. S. Rev. Sts. § 5354. The words "or bodily injury" are inserted; and there is a change in the punishment.

SECTION 237. Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, for the purpose of disposing of the same, any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier for carriage, or shall carry, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, to any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon, the event of any such lottery, gift enterprise, or similar scheme, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme, or shall knowingly take or receive, or cause to be taken or received, any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall, for the first offense, be fined not more than one thousand dollars, or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than two years.

**Importing,  
etc., lottery  
tickets, etc.**

This section is partly taken from the Act of March 2, 1895, c. 191, § 1 (28 St. 963). It is greatly enlarged.

See § 213. *United States v. Ames*, 95 F. R. 453; *United States v. Whelpley*, 125 Id. 616; *State v. United States Express Co.*, 95 Minn. 442, 445; 17 A. G. Op. 624. This section is constitutional. *Lottery Case*, 188 U. S. 321, 47 L. ed. 492; *Reilly v. United States*, 106 F. R. 896. A slip of paper sent between a lottery and its local agent showing the numbers drawn and the amounts of the prizes is not a

Importing,  
etc., lottery  
tickets, etc.

"paper . . . purporting to be or to represent a ticket," etc.: *France v. United States*, 164 U. S. 676, 41 L. ed. 595; neither is a duplicate retained by the agent of the ticket issued to the customer. *Francis v. United States*, 188 U. S. 375, 47 L. ed. 508.

"*Lottery.*" A scheme to increase the sale of a cereal called "Mother's Oats" whereby a letter of the word "mothers" was placed in each package and a prize offered to any one when he got all the letters of the word is a lottery. *United States v. Jefferson*, 134 F. R. 299. The same is true where each package of a food product contains part of a paper animal, and a prize is offered to one who obtains seven complete animals. *United States v. McKenna*, 149 F. R. 252. For further cases on the question of what constitutes a lottery see note to § 213; see also 21 A. G. Op. 313; 23 Id. 512.

Intoxicating liquors  
by inter-  
state, etc.,  
shipment  
delivered  
to other  
than *bona fide* con-  
signee

SECTION 238. Any officer, agent, or employee of any railroad company, express company, or other common carrier, who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the *bona fide* consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind which has been shipped from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

This section is new. *Commonwealth v. Peoples Express Co.*, 201 Mass. 564, 576.

SECTION 239. Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part thereof, before, on, or after delivery from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars.

Carrier,  
etc., col-  
lecting  
purchase  
price of  
interstate,  
etc., ship-  
ment of  
intoxicat-  
ing liquor

This section is new. *Commonwealth v. Peoples Express Co.*, 201 Mass. 564, 576.

SECTION 240. Whoever shall knowingly ship or cause to be shipped, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, any package of or package containing any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than five thousand dollars; and such liquor shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

Shipping  
packages of  
intoxicat-  
ing liquors  
in inter-  
state, etc.,  
commerce  
not plainly  
marked

This section is new. *Commonwealth v. Peoples Express Co.*, 201 Mass. 564, 576.

Importing  
certain  
injurious  
birds and  
animals  
forbidden

SECTION 241. The importation into the United States, or any Territory or District thereof, of the mongoose, the so-called "flying-foxes" or fruit bats, the English sparrow, the starling, and such other birds and animals as the Secretary of Agriculture may from time to time declare to be injurious to the interests of agriculture or horticulture, is hereby prohibited; and all such birds and animals shall, upon arrival at any port of the United States, be destroyed or returned at the expense of the owner. No person shall import into the United States, or into any Territory or District thereof, any foreign wild animal or bird, except under special permit from the Secretary of Agriculture: *Provided*, That nothing in this section shall restrict the importation of natural history specimens for museums or scientific collections, or of certain cage birds, such as domesticated canaries, parrots, or such other birds as the Secretary of Agriculture may designate. The Secretary of the Treasury is hereby authorized to make regulations for carrying into effect the provisions of this section.

This section is founded on the Act of May 25, 1900, c. 553, § 2 (31 St. 188). The phraseology is considerably modified, and the section is made to apply to any Territory or District of the United States. 23 A. G. Op. 213.

Transportation of  
illegally  
killed  
game, etc.,  
prohibited

SECTION 242. It shall be unlawful for any person to deliver to any common carrier for transportation, or for any common carrier to transport from any State, Territory, or District of the United States, to any other State, Territory, or District thereof, any foreign animals or birds, the importation of which is prohibited, or the dead bodies or parts thereof of any wild animals or birds, where such animals or birds have been killed or shipped in violation of the laws of the State, Territory, or District in which the same were killed, or from which they were shipped: *Provided*, That nothing herein shall prevent the transportation of any dead birds or animals killed during the season when the same may be lawfully captured, and the export of which is not prohibited by law in the State, Territory, or District in which the same are captured or killed: *Provided further*, That nothing herein shall prevent the importation, transportation, or sale of birds or bird plumage manufactured from the feathers of barnyard fowls.

This section is taken from the Act of May 25, 1900, c. 553, § 3 (31 St. 188). There is a change in the phraseology, and

the section is made to cover any Territory or District of the United States.

An indictment hereunder must allege that the animals were killed, etc., in violation of some local statute. *United States v. Smith*, 115 F. R. 423. Under the former wording of this section it appears to have been no offense where the animals were not killed but merely shipped in violation of some local statute. *Id.*; *United States v. Thompson*, 147 F. R. 637. Preparing bodies of animals for shipment with intent to ship them is not a violation of this section or § 243, though the animals were killed contrary to local statute and the packages are improperly marked. *United States v. Smith*, *supra*.

**Transportation of illegally killed game, etc., prohibited**

SECTION 243. All packages containing the dead bodies, or the plumage, or parts thereof, of game animals, or game or other wild birds, when shipped in interstate or foreign commerce, shall be plainly and clearly marked, so that the name and address of the shipper, and the nature of the contents, may be readily ascertained on an inspection of the outside of such package.

**Marking of packages**

This section is taken from the first part of the Act of May 25, 1900, c. 553, § 4 (31 St. 188). There is a slight change in phraseology. See note to § 242.

SECTION 244. For each evasion or violation of any provision of the three sections last preceding, the shipper shall be fined not more than two hundred dollars; the consignee knowingly receiving such articles so shipped and transported in violation of said sections shall be fined not more than two hundred dollars; and the carrier knowingly carrying or transporting the same in violation of said sections shall be fined not more than two hundred dollars.

**Penalty for violations**

This section is taken from the last part of the Act of May 25, 1900, c. 553, § 4 (31 St. 188).

SECTION 245. Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, or shall therein knowingly deposit or cause to be deposited with any express company or

**Importing and transporting obscene books, etc.**



**Importing  
and trans-  
porting  
obscene  
books, etc.**

other common carrier, for carriage from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, to any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any obscene, lewd, or lascivious, or any filthy, book, pamphlet, picture, paper, letter, writing, print, or other matter of indecent character, or any drug, medicine, article, or thing designed, adapted, or intended for preventing conception, or producing abortion, or for any indecent or immoral use, or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of the herein-before-mentioned articles, matters, or things may be obtained or made; or whoever shall knowingly take or cause to be taken from such express company or other common carrier any matter or thing the depositing of which for carriage is herein made unlawful, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

This section is taken from the Act of Feb. 8, 1905, c. 550 (33 St. 705). There are a few changes. See particularly § 211 of this act.

## CHAPTER TEN

### THE SLAVE TRADE AND PEONAGE

| SECTION  | SECTION  |
|--|--|
| 246. Confining or detaining slaves on board vessel                       | 259. Forfeiture of interest in vessels transporting slaves |
| 247. Seizing slaves on foreign shores                                    | 260. Seizure of vessels engaged in the slave trade         |
| 248. Bringing slaves into the United States                              | 261. Proceeds of condemned vessels, how distributed        |
| 249. Equipping vessels for slave trade                                   | 262. Disposal of persons found on board seized vessel      |
| 250. Transporting persons to be held as slaves                           | 263. Apprehension of officers and crew                     |
| 251. Hovering on coast with slaves on board                              | 264. Removal of persons delivered from seized vessels      |
| 252. Serving in vessels engaged in the slave trade                       | 265. To what port captured vessels sent                    |
| 253. Receiving or carrying away any person to be sold or held as a slave | 266. When owners of foreign vessels shall give bond        |
| 254. Equipping, etc., vessel for slave trade                             | 267. Instructions to commanders of armed vessels           |
| 255. Penalty on persons building, equipping, etc.                        | 268. Kidnapping  |
| 256. Forfeiture of vessel transporting slaves                            | 269. Holding or returning persons to peonage               |
| 257. Receiving persons on board to be sold as slaves                     | 270. Obstructing enforcement of preceding section          |
| 258. Vessels found hovering on coast                                     | 271. Bringing kidnapped persons into United States         |

SECTION 246. Whoever, being of the crew or ship's company of any foreign vessel engaged in the slave trade, or being of the crew or ship's company of any vessel owned wholly or in part, or navigated for or in behalf of any citizen of the United States, forcibly confines or detains on board such vessel any person as a slave, or, on board such vessel, offers or attempts to sell as a slave any such person, or on the high seas, or anywhere on tide water, transfers or delivers to any other vessel any such person with intent to make such person a slave, or lands or delivers on shore from on board such vessel any person with intent to make sale of, or having pre-

Confining or detaining slaves on board vessel

**Confining  
or detain-  
ing slaves  
on board  
vessel**

viously sold such person as a slave, is a pirate, and shall be imprisoned for life.

This section is taken from U. S. Rev. Sts. § 5375. See also the Act of Jan. 15, 1897, c. 29, § 2 (29 St. 487). The word "person" is substituted for "negro or mulatto."

United States *v.* Libby, 1 Wood. & M. 221, 26 Fed. Cas. 928; United States *v.* Smith, 3 Blatch. 255; United States *v.* Gordon, 5 Id. 18, 25 Fed. Cas. 1364; United States *v.* Westervelt, 5 Blatch. 30; United States *v.* Corrie, 23 L. R. 145, 25 Fed. Cas. 658; United States *v.* Darnaud, 3 Wall. Jr. 143.

**Seizing  
slaves on  
foreign  
shores**

SECTION 247. Whoever, being of the crew or ship's company of any foreign vessel engaged in the slave trade, or being of the crew or ship's company of any vessel owned in whole or in part, or navigated for, or in behalf of, any citizen of the United States, lands from such vessel, and, on any foreign shore, seizes any person with intent to make such person a slave, or decoys, or forcibly brings, or carries or receives such person on board such vessel, with like intent, is a pirate, and shall be imprisoned for life.

This section is taken from U. S. Rev. Sts. § 5376. See also the Act of Jan. 15, 1897, c. 29, § 2 (29 St. 487). The word "person" is substituted for "negro or mulatto."

United States *v.* Westervelt, 5 Blatch. 30; United States *v.* Corrie, 23 L. R. 145, 25 Fed. Cas. 658; United States *v.* Battiste, 2 Sumner, 240; United States *v.* Brown, 24 Fed. Cas. 1245.

For an interesting history of the laws relating to the slave trade see Charge to Grand Jury, 3 Phila. 527, 30 Fed. Cas. 1026.

**Bringing  
slaves into  
United  
States**

SECTION 248. Whoever brings within the jurisdiction of the United States, in any manner whatsoever, any person from any foreign kingdom or country, or from sea, or holds, sells, or otherwise disposes of, any person so brought in, as a slave, or to be held to service or labor, shall be fined not more than ten thousand dollars, one half to the use of the United States and

the other half to the use of the party who prosecutes the indictment to effect; and, moreover, shall be imprisoned not more than seven years.

**Bringing  
slaves into  
United  
States**

This section is taken from U. S. Rev. Sts. § 5377. In the second line the words "negro, mulatto or" before, and the words "of color " after, "person" are stricken out.

The Josefa Segunda, 10 Wheat. 312, 6 L. ed. 329; United States v. The Catherine, 2 Paine, 721, 25 Fed. Cas. 332; United States v. Flowery, 1 Sprague, 109, 8 L. R. 258, 25 Fed. Cas. 1124; United States v. Haun, 8 Am. L. Reg. 663, 26 Fed. Cas. 227; United States v. Libby, 1 Wood. & M. 221, 26 Fed. Cas. 928; United States v. Sutter, Hoff. Dec. 27, 27 Fed. Cas. 1368; Charge to Grand Jury, 3 Phila. 527, 30 Fed. Cas. 1026.

**SECTION 249.** Whoever builds, fits out, equips, loads, or otherwise prepares, or sends away, either as master, factor, or owner, any vessel, in any port or place within the jurisdiction of the United States, or causes such vessel to sail from any port or place whatsoever, within such jurisdiction, for the purpose of procuring any person from any foreign kingdom or country to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as a slave, or held to service or labor, shall be fined not more than five thousand dollars, one half to the use of the United States and the other half to the use of the person prosecuting the indictment to effect; and shall, moreover, be imprisoned not more than seven years.

**Equipping  
vessels for  
slave trade**

This section is taken from U. S. Rev. Sts. § 5378. In the middle of the section the words "negro, mulatto or" before, and the words "of color" after, "person" are stricken out. There is a change in the punishment.

United States v. The Catherine, 2 Paine, 721, 25 Fed. Cas. 332; United States v. Kelly, 2 Sprague, 77, 26 Fed. Cas. 697; United States v. La Coste, 2 Mason, 129, 26 Fed. Cas. 826; United States v. Smith, 2 Mason, 143, 27 Fed. Cas. 1167.

**Transport-  
ing persons  
to be held  
as slaves**

SECTION 250. Whoever, within the jurisdiction of the United States, takes on board, receives, or transports from any foreign kingdom or country, or from sea, any person in any vessel, for the purpose of holding, selling, or otherwise disposing of such person as a slave, or to be held to service or labor, shall be punished as prescribed in the section last preceding.

This section is taken from U. S. Rev. Sts. § 5379. In the middle of the section the words "negro, mulatto or" before, and the words "of color" after, "person" are stricken out.

The *Merino*, 9 Wheat. 391, 6 L. ed. 118; *United States v. Battiste*, 2 Sumner, 240, 24 Fed. Cas. 1042; *United States v. The Catherine*, 2 Paine, 721, 25 Fed. Cas. 332.

**Hovering  
on coast  
with slaves  
on board**

SECTION 251. Whoever, being the captain, master, or commander of any vessel found in any river, port, bay, harbor, or on the high seas, within the jurisdiction of the United States, or hovering on the coast thereof, having on board any person, for the purpose of selling such person as a slave, or with intent to land such person for any such purpose, shall be fined not more than ten thousand dollars and imprisoned not more than four years.

This section is taken from U. S. Rev. Sts. § 5380. In the first line the word "American" is stricken out and in the middle of the section the words "negro, mulatto or" before, and the words "of color" after, "person" are stricken out.

The *Josefa Segunda*, 5 Wheat. 338, 10 Id. 312, 6 L. ed. 329; *United States v. Preston*, 3 Pet. 57, 7 L. ed. 601; *Almeida v. Certain Slaves*, 5 Hughes, 55, 1 Fed. Cas. 538; *Currahee v. McQueen*, 2 Paine, 109, 6 Fed. Cas. 984; *United States v. The Kitty*, Bee Adm. 252, 26 Fed. Cas. 791; 1 A. G. Op. 446.

**Serving on  
vessels in  
slave trade**

SECTION 252. Whoever, being a citizen of the United States, or other person residing therein, voluntarily serves on board of any vessel employed or made use of in the transportation of slaves from any foreign country or place to another,

shall be fined not more than two thousand dollars and imprisoned not more than two years.

**Serving on  
vessels in  
slave trade**

This section is the same as U. S. Rev. Sts. § 5381, except that the word "American" before "vessel" is stricken out. See also U. S. Rev. Sts. § 5382.

United States *v.* Morris, 14 Pet. 464, 10 L. ed. 543; Allen *v.* United States, Taney, 112, 1 Fed. Cas. 518; Tryphenia *v.* Harrison, 1 Wash. C. C. 522, 24 Fed. Cas. 252; United States *v.* Andrews, Brun. Col. Cas. 422, 24 Fed. Cas. 815; United States *v.* Battiste, 2 Sumner, 240, 24 Fed. Cas. 1042; United States *v.* Greathouse, 4 Sawy. 457, 26 Fed. Cas. 18; United States *v.* Kennedy, 4 Wash. C. C. 91, 26 Fed. Cas. 762; United States *v.* Smith, Brun. Col. Cas. 82, 27 Fed. Cas. 1158; Charge to Grand Jury, 3 Phila. 527, 30 Fed. Cas. 1026.

SECTION 253. Whoever, being the master or owner or person having charge of any vessel, receives on board any other person, with the knowledge or intent that such person is to be carried from any place subject to the jurisdiction of the United States to any other place, to be held or sold as a slave, or carries away from any place subject to the jurisdiction of the United States any such person, with the intent that he may be so held or sold as a slave, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

**Receiving  
or carrying  
away per-  
son to be  
held as  
slave**

This section is the same as U. S. Rev. Sts. § 5524, except that there is a slight change in the phraseology.

SECTION 254. No person shall, for himself or for another, as master, factor, or owner, build, fit, equip, load, or otherwise prepare any vessel in any port or place within the jurisdiction of the United States, or cause any vessel to sail from any port or place within the jurisdiction of the United States, for the purpose of procuring any person from any foreign kingdom, place, or country to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of, as a slave, or to be held to service or labor; and every vessel so built, fitted out, equipped, laden, or otherwise prepared, with her tackle, apparel, furniture, and lading,

**Equipping,  
etc., vessel  
for slave  
trade**

Equipping,  
etc., vessel  
for slave  
trade

shall be forfeited; one moiety to the use of the United States and the other to the use of the person who sues for the forfeiture and prosecutes the same to effect.

This section is the same as U. S. Rev. Sts. § 5551. In the middle of the section the words "negro, mulatto or" before, and the words "of color" after, "person" are stricken out.

The *Emily*, 9 Wheat. 381, 6 L. ed. 116; The *Merino*, Id. 391, 6 L. ed. 118; The *St. Jago de Cuba*, Id. 409, 6 L. ed. 122; The *Plattsburgh*, 10 Id. 133, 6 L. ed. 284; *United States v. Gooding*, 12 Id. 460, 6 L. ed. 693; The *Slavers*, 2 Wall. 350, 17 L. ed. 878; The *Alexander*, 3 Mason, 175, 1 Fed. Cas. 362; *Allen v. United States*, Taney, 112, 1 Fed. Cas. 518; The *Caroline*, 1 Brock. 384, 5 Fed. Cas. 90; *Evans v. Bollen*, 4 Dall. 342, 1 L. ed. 859, 8 Fed. Cas. 836; *Fales v. Mayberry*, 2 Gall. 560, 8 Fed. Cas. 970; The *Glamorgan*, 1 Sprague, 273, 10 Fed. Cas. 463; The *Malaga*, 2 Am. L. J. 97, 4 Pa. L. J. Rep. 339, 16 Fed. Cas. 535; The *Orion*, 4 Weekly L. Gaz. 327, 18 Fed. Cas. 817; *Strohm v. United States*, Taney, 413, 23 Fed. Cas. 240; *Tryphenia v. Harrison*, 1 Wash. C. C. 522, 24 Fed. Cas. 252; *United States v. The Augusta*, 24 Fed. Cas. 892; *United States v. Brune*, 2 Wall. Jr. 264, 24 Fed. Cas. 1280; *United States v. The Catherine*, 2 Paine, 721, 25 Fed. Cas. 332; *United States v. The Isla de Cuba*, 2 Cliff. 295, 458, 26 Fed. Cas. 548, 551; *United States v. La Coste*, 2 Mason, 129, 26 Fed. Cas. 826; *United States v. Libby*, 1 Wood. & M. 221, 26 Fed. Cas. 928; *United States v. Malebran*, Brun. Col. Cas. 426, 26 Fed. Cas. 1145; *United States v. Naylor*, 19 L. R. 449, 27 Fed. Cas. 78; *United States v. The Penelope*, 2 Pet. Adm. 438, 27 Fed. Cas. 486; *United States v. The Reindeer*, 2 Cliff. 57, 27 Fed. Cas. 753; *United States v. Smith*, 2 Mason, 143, 27 Fed. Cas. 1167; The *Wanderer*, 1 Sprague, 515, 29 Fed. Cas. 150; *Charge to Grand Jury*, 3 Phila. 527, 30 Fed. Cas. 1026; *United States v. Tithing Yard*, 9 Utah, 273; 4 A. G. Op. 139, 241, 243, 566; 5 Id. 724.

See the President's Proclamation of July 2, 1890 (27 Stat. 886), of the general act for the repression of the slave trade in Africa by civilized nations. As slavery no longer exists in the United States, a person held as a slave by an Alaskan Indian, according to the custom of his tribe, will be released on *habeas corpus*. *In re Sah Quah*, 31 F. R. 327.

**Equipping,  
etc., vessel  
for slave  
trade**

SECTION 255. Whoever so builds, fits out, equips, loads, or otherwise prepares or sends away any vessel, knowing or intending that the same shall be employed in such trade or business, contrary to the provisions of the section last preceding, or in any way aids or abets therein, shall, besides the forfeiture of the vessel, pay the sum of two thousand dollars; one moiety thereof to the use of the United States and the other moiety thereof to the use of the person who sues for and prosecutes the same to effect.

**Penalty on  
persons  
building,  
equipping,  
etc.**

This section is the same as U. S. Rev. Sts. § 5552. *United States v. The Catherine*, 2 Paine, 721, 25 Fed. Cas. 332.

SECTION 256. Every vessel employed in carrying on the slave trade or on which is received or transported any person from any foreign kingdom or country, or from sea, for the purpose of holding, selling, or otherwise disposing of such person as a slave, or of holding such person to service or labor, shall, together with her tackle, apparel, furniture, and the goods and effects which may be found on board, or which may have been imported thereon in the same voyage, be forfeited; one moiety to the use of the United States and the other to the use of the person who sues for and prosecutes the forfeiture to effect.

**Forfeiture  
of vessels  
transport-  
ing slaves**

This section is taken from U. S. Rev. Sts. § 5553. In the second line the words "negro, mulatto or" before, and the words "of color" after, "person" are stricken out. *The Merino*, 9 Wheat. 391, 6 L. ed. 118; *United States v. Gooding*, 12 Id. 460, 6 L. ed. 693; *The Malaga*, 4 Pa. L. J. Rep. 339, 2 Am. L. J. 97, 16 Fed. Cas. 535; *The Mary Ann*, Abb. Adm. 270, 16 Fed. Cas. 949; *United States v. Battiste*, 2 Sumner, 240, 24 Fed. Cas. 1042; *United States v. The Catherine*, 2 Paine, 721, 25 Fed. Cas. 332.



**Receiving  
persons on  
board to be  
sold as  
slaves**

SECTION 257. Whoever, being a citizen of the United States, takes on board, receives, or transports any person for the purpose of selling such person as a slave shall, in addition to the forfeiture of the vessel, pay for each person so received on board or transported the sum of two hundred dollars, to be recovered in any court of the United States; the one moiety thereof to the use of the United States and the other moiety to the use of the person who sues for and prosecutes the same to effect.

This section is taken from U. S. Rev. Sts. § 5554. The only change is the same as that in § 256, *supra*. United States v. The Catherine, 2 Paine, 721, 25 Fed. Cas. 332.

**Vessels  
found  
hovering  
on coasts to  
be forfeited**

SECTION 258. Every vessel which is found in any river, port, bay, or harbor, or on the high seas, within the jurisdiction of the United States, or hovering on the coasts thereof, and having on board any person, with intent to sell such person as a slave, or with intent to land the same for that purpose, either in the United States or elsewhere, shall, together with her tackle, apparel, furniture, and the goods or effects on board of her, be forfeited to the United States.

This section is taken from U. S. Rev. Sts. § 5555. The only change is the same as that in § 256. See the note to § 251. 4 A. G. Op. 566.

**Forfeiture  
of interest  
in slave  
vessels**

SECTION 259. It shall be unlawful for any citizen of the United States, or other person residing therein, or under the jurisdiction thereof, directly or indirectly to hold or have any right or property in any vessel employed or made use of in the transportation or carrying of slaves from one foreign country or place to another, and any such right or property shall be forfeited, and may be libeled and condemned for the use of the person suing for the same. Whoever shall violate the prohibition of this section shall also forfeit and pay a sum of money equal to double the value of his right or property in such vessel; and shall also forfeit a sum of money equal to double the value of the interest he had in the slaves which at any time may be transported or carried in such vessels.

This section is taken from the U. S. Rev. Sts. § 5556. Near the beginning of the section the words "or under the juris-

diction thereof" are inserted. The *Plattsburg*, 10 Wheat. 133, 6 L. ed. 284; *The Alexander*, 3 Mason, 175, 1 Fed. Cas. 362; *The Porpoise*, 2 Curt. 307, 19 Fed. Cas. 1064; *Tryphenia v. Harrison*, 1 Wash. 522, 24 Fed. Cas. 252; *United States v. The Catherine*, 2 Paine, 271, 25 Fed. Cas. 332; *The Reindeer*, 2 Cliff. 57, 27 Fed. Cas. 753; *United States v. Smith*, Brun. Col. Cas. 82, 27 Fed. Cas. 1158; *United States v. Vickery*, 1 Har. & J. (Ind.) 427, 28 Fed. Cas. 374; *Charge to Grand Jury*, 3 Phila. 527, 30 Fed. Cas. 1026.

**Forfeiture  
of interest  
in slave  
vessels**

SECTION 260. The President is authorized, when he deems it expedient, to man and employ any of the armed vessels of the United States to cruise wherever he may judge attempts are making to carry on the slave trade, by citizens or residents of the United States, in contravention of laws prohibitory of the same; and, in such case, he shall instruct the commanders of such armed vessels to seize, take, and bring into any port of the United States, to be proceeded against according to law, all American vessels, wheresoever found, which may have on board, or which may be intended for the purpose of taking on board, or of transporting, or may have transported any person, in violation of the provisions of any Act of Congress prohibiting the traffic in slaves.

**Seizure of  
vessels in  
slave trade**

This section is taken from U. S. Rev. Sts. § 5557. The only change is the same as that in § 256, *supra*. The *Glamorgan*, 1 Sprague, 273, 10 Fed. Cas. 463; *The Malaga*, 4 Pa. L. J. Rep. 339, 2 Am. L. J. 97, 16 Fed. Cas. 535; *The Porpoise*, 2 Curt. 307, 19 Fed. Cas. 1064; *United States v. Andrews*, Brun. Col. Cas. 422, 24 Fed. Cas. 815; *United States v. Battiste*, 2 Sumner, 240, 24 Fed. Cas. 1042; *United States v. Corrie*, Brun. Col. Cas. 686, 25 Fed. Cas. 658; *United States v. Johnson*, 20 Niles Reg. (Pa.) 137, 25 Fed. Cas. 1200; *United States v. La Jeune Eugenie*, 2 Mason, 409, 26 Fed. Cas. 832; *Charge to Grand Jury*, 3 Phila. 527, 30 Fed. Cas. 1026; 1 A. G. Op. 334; 3 Id. 405; 4 Id. 241.

**Proceeds of condemned vessels paid into the Treasury** SECTION 261. The proceeds of all vessels, their tackle, apparel, and furniture, and the goods and effects on board of them, which are so seized, prosecuted, and condemned, shall be paid into the Treasury of the United States.

This section is taken from U. S. Rev. Sts. § 5558.

The provision as to paying the proceeds into the treasury of the United States is substituted for that as to prize money. See note to § 260.

**Disposal of persons found on seized vessel** SECTION 262. The officers of the vessel making such seizure shall safely keep every person found on board of any vessel so seized, taken, or brought into port for condemnation, and shall deliver every such person to the marshal of the district into which he may be brought, if into a port of the United States, or if elsewhere, to such person as may be lawfully appointed by the President, in the manner directed by law, transmitting to the President, as soon as may be after such delivery, a descriptive list of such persons, in order that he may give directions for the disposal of them.

This section is taken from U. S. Rev. Sts. § 5559. The only change is the same as that in § 256, *supra*. See note to § 260. 4 A. G. Op. 566.

**Apprehension of officers and crew** SECTION 263. The commanders of such commissioned vessels shall cause to be apprehended and taken into custody every person found on board of such offending vessel so seized and taken, being of the officers or crew thereof, and him convey, as soon as conveniently may be, to the civil authority of the United States, to be proceeded against in due course of law.

This section is the same as U. S. Rev. Sts. § 5560. See notes to §§ 256, 260.

**Removal of persons delivered from seized vessel** SECTION 264. The President is authorized to make such regulations and arrangements as he may deem expedient for the safe-keeping, support, and removal beyond the limits of the United States of all such persons as may be so delivered and brought within its jurisdiction.

This section is taken from U. S. Rev. Sts. § 5561. There is the same change as in § 256, *supra*, and the provision as to appointing an African agent is omitted. 1 A. G. Op. 334; 5 Id. 728.

**SECTION 265.** It shall be the duty of the commander of any armed vessel of the United States, whenever he makes any capture under the preceding provisions, to bring the vessel and her cargo, for adjudication, into some port of the State, Territory, or District to which such vessel so captured may belong, if he can ascertain the same; if not, then into any convenient port of the United States.

**To what port captured vessel sent**

This section is the same as U. S. Rev. Sts. § 5563, except that the words "or District" are inserted.

**SECTION 266.** Every owner, master, or factor of any foreign vessel clearing from any port within the jurisdiction of the United States, and suspected of being intended for the slave trade, and the suspicion being declared to the officer of the customs by any citizen, on oath, and such information being to the satisfaction of the officer, shall first give bond, with sufficient sureties, to the Treasurer of the United States that none of the natives of any foreign country or place shall be taken on board such vessel to be transported or sold as slaves in any other foreign port or place whatever, within nine months thereafter.

**When owners of foreign vessels shall give bond**

This section is taken from U. S. Rev. Sts. § 5564. The words "clearing from any port within the jurisdiction of the United States" are substituted for "clearing out for any of the coasts or kingdoms of Africa."

*United States v. The Catherine*, 2 Paine, 721, 25 Fed. Cas. 332; 1 A. G. Op. 312.

**SECTION 267.** The President is authorized to issue instructions to the commanders of the armed vessels of the United States, directing them, whenever it is practicable, and under such rules and regulations as he may prescribe, to proceed directly to the country from which they were taken, and there hand over to the agent of the United States all such persons, delivered from on board vessels seized in the prosecution of the slave trade; and they shall afterwards bring the captured vessels and persons engaged in prosecuting such trade to the United States for trial and adjudication.

**Instructions to masters of armed vessels**

This section is taken from U. S. Rev. Sts. § 5567. The words "country from which they were taken" are substituted for "the coast of Africa," and the word "persons" is substituted for "negroes, mulattos, and persons of color."

**Kidnap-  
ping**

SECTION 268. Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or who entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held; or who in any way knowingly aids in causing any other person to be held, sold, or carried away to be held or sold as a slave, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

This section is the same as U. S. Rev. Sts. § 5525, except that there is a slight change in the punishment.

A person who "falsely accuses another of crime and carries him before a magistrate in order that he may be convicted and put to hard labor, in consequence of which such person is convicted and put to hard labor, the accuser at the time having the purpose or design to hire such person, or to enable some other person to hire him," is guilty hereunder "of carrying away" such person "with the intent that such other person be sold into involuntary servitude." Peonage Cases, 123 F. R. 671, 682.

**Holding or  
returning  
persons to  
peonage**

SECTION 269. Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

This section is the same as U. S. Rev. Sts. § 5526, except that there is a slight change in the punishment.

This is constitutional. *Clyatt v. United States*, 197 U. S. 207, 49 L. ed. 726. "Return" implies that the person has heretofore been held in a state of peonage. *Id.* "Peonage" is the holding of persons in unwilling servitude in payment of debts. *United States v. Clement*, 171 F. R. 974; *United States v. McClellan*, 127 *Id.* 971. It includes more than the old New Mexican peonage, *United States v. McClellan*, *supra*; Peonage Cases, 123 F. R. 671; *In re Lewis*, 114 *Id.* 963; in view of the great weight of later

authority, *United States v. Eberhart*, 127 F. R. 252, can hardly be law. It is immaterial whether the condition of peonage exists by virtue of local law or custom or in violation or without the sanction of law. *Peonage Cases*, 123 F. R. 671. A statute making it an offense to violate a contract of labor upon the faith of which money or goods have been advanced to him has been held constitutional. *State v. Murray*, 116 La. 655.

**Holding or  
returning  
persons to  
peonage**

SECTION 270. Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of the section last preceding, shall be liable to the penalties therein prescribed.

**Obstructing  
enforce-  
ment of  
preceding  
section**

This section is the same as U. S. Rev. Sts. § 5527, except that the words "pains and" before "penalties" are omitted. See note to § 269.

SECTION 271. Whoever shall knowingly and willfully bring into the United States or any place subject to the jurisdiction thereof, any person inveigled or forcibly kidnapped in any other country, with intent to hold such person so inveigled or kidnapped in confinement or to any involuntary servitude; or whoever shall knowingly and willfully sell, or cause to be sold, into any condition of involuntary servitude, any other person for any term whatever; or whoever shall knowingly and willfully hold to involuntary servitude any person so brought or sold, shall be fined not more than five thousand dollars and imprisoned not more than five years.

**Bringing  
kidnapped  
person into  
United  
States, etc.**

This section is taken from the Act of June 23, 1874, c. 464, § 1 (18 St. 464). The words "any place subject to the jurisdiction thereof" are substituted for "the Territories thereof," and the word "servitude" is twice substituted for "service."

## CHAPTER ELEVEN

OFFENSES WITHIN THE ADMIRALTY AND MARITIME  
AND THE TERRITORIAL JURISDICTION OF THE  
UNITED STATES

## SECTION

272. Places within or waters upon which sections of this chapter shall apply
273. Murder
274. Manslaughter
275. Punishment for murder; for manslaughter
276. Assault with intent to commit murder, rape, robbery, etc.
277. Attempt to commit murder or manslaughter
278. Rape
279. Having carnal knowledge of female under sixteen

## SECTION

280. Seduction of female passenger on vessel
281. Payment of fine to female seduced; evidence required; limitation on indictment
282. Loss of life by misconduct of officers, etc., of vessels
283. Maiming
284. Robbery
285. Arson of dwelling-house
286. Arson of other buildings, etc.
287. Larceny
288. Receiving, etc., stolen goods
289. Laws of States adopted for punishing wrongful acts, etc.

Places and  
waters  
applicable

On board  
American  
ship on  
high seas,  
etc.

On board  
American  
vessel on  
Great  
Lakes,  
etc.

SECTION 272. The crimes and offenses defined in this chapter shall be punished as herein prescribed:

First. When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof.

Second. When committed upon any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, namely: Lake Superior, Lake Michigan, Lake Huron, Lake Saint Clair, Lake Erie, Lake Ontario, or any of the waters connecting any of said lakes, or upon the River Saint Lawrence where the same constitutes the International boundary line.

Third. When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dock-yard, or other needful building. **On land under exclusive control of United States**

Fourth. On any island, rock, or key, containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States. **Guano Islands**

This section is partly founded on U. S. Rev. Sts. §§ 5339 and 5570, and the Act of Sept. 4, 1890, c. 874, § 1 (26 St. 424). A part of the section is new.

*Clause 1.* United States *v.* Jackalow, 1 Black, 484, 17 L. ed. 225; United States *v.* Rauscher, 119 U. S. 407, 30 L. ed. 425; Manchester *v.* Massachusetts, 139 Id. 240, 35 L. ed. 159, 152 Mass. 230, 246; Andersen *v.* United States, 170 U. S. 481, 42 L. ed. 1116; United States *v.* Plumer, 3 Cliff. 28; United States *v.* Mackenzie, 1 N. Y. Leg. Obs. 227, 371, 26 Fed. Cas. 1118, 30 Id. 1160; United States *v.* Burlington Ferry Co., 21 F. R. 331, 336; The Hungaria, 41 Id. 109; United States *v.* The Kodiak, 53 Id. 126; United States *v.* Newth, 149 Id. 302. This is founded on the commerce clause of the Constitution. United States *v.* Beacham, 29 F. R. 284; The Tolchester, 42 Id. 180. The words "*high seas*" mean any waters on the seacoast which are without the boundaries of low-water mark, although such waters may be in a roadstead or bay within the jurisdictional limits of a foreign government. United States *v.* Ross, 1 Gall. 624. They do not include an inclosed dock in a foreign port: United States *v.* Hamilton, 1 Mason, 152, 26 Fed. Cas. 93; nor a foreign harbor: United States *v.* Morel, 13 Am. Jur. 279, 1 Brun. Coll. Cas. 373, 26 Fed. Cas. 1310; United States *v.* Jackson, 2 N. Y. Leg. Obs. 3, 26 Fed. Cas. 558; nor a domestic harbor. United States *v.* Bevans, 3 Wheat. 336, 4 L. ed. 404; United States *v.* Davis, 2 N. Y. Leg. Obs. 35, 25



**Guano  
Islands**

Fed. Cas. 784. They obviously include the uninclosed waters of the ocean on the seacoast outside the *fauces terræ*. *United States v. Grush*, 5 Mason, 290. They have been held to include the open uninclosed waters of the Great Lakes. *United States v. Rodgers*, 150 U. S. 249, 37 L. ed. 1071; *Ex parte O'Hare*, 171 F. R. 290; see, however, *In re Garnett*, 141 U. S. 1, 35 L. ed. 631; *United States v. Peterson*, 64 F. R. 145; *United States v. Rogers*, 46 Id. 1; *Ex parte Byers*, 32 F. R. 404; *United States v. Beyer*, 31 Id. 35; *United States v. Beacham*, 29 Id. 284; *People v. Tyler*, 7 Mich. 161. Navigable waters of the United States include rivers and lakes which of themselves, or by uniting with other waters, form a continued highway on which international or interstate commerce may be carried on, but not lakes or rivers wholly within a State and having no navigable outlet into another State or nation. *The Daniel Ball*, 10 Wall. 557, 19 L. ed. 999; *Miller v. New York*, 109 U. S. 385, 27 L. ed. 971; *United States v. Burlington Ferry Co.*, 21 F. R. 331; 20 A. G. Op. 101. This section applies to a crime on board a vessel not belonging to citizens of the United States, if she had at the time no national character, but was possessed and held by pirates or persons not lawfully sailing under the flag of any foreign nation; but not if the vessel in which the offender is or to which he belongs is at the time, both in fact and in right, the property of a subject of a foreign State and subject at the time to his control. The flag of the ship determines the jurisdiction of the offense. *United States v. Holmes*, 5 Wheat. 412, 5 L. ed. 122; see *United States v. Demarchi*, 5 Blatch. 84; *United States v. Kessler*, Baldw. 15; 3 A. G. Op. 484, 489. It has been held to apply to an offense upon a ship of the United States in the Bay of Cadiz. *United States v. Gourlay*, 2 Wheeler Cr. Cas. 102, 25 Fed. Cas. 1382. The certificate of registry and proof that the vessel carried the United States flag is *prima facie* evidence of proper registration and of the nationality of the

vessel and its owner. *St. Clair v. United States*, 154 U. S. 134, 38 L. ed. 936. Guano Islands

*"Out of the jurisdiction of any particular State"* means State of the United States. *United States v. The Pirates*, 5 Wheat. 184, 200, 5 L. ed. 64. Whether a place is within the boundaries of a State is a question for the jury. *Ex parte Ballinger v. Nowland*, 5 Hughes, 387.

*Clause 2.* A river which is tributary to one of the Great Lakes but which does not connect any of them is not here included. *United States v. Rogers*, 46 F. R. 1.

*Clause 3.* *Cook v. United States*, 138 U. S. 157, 34 L. ed. 906; *Benson v. United States*, 146 Id. 325, 36 L. ed. 991; *United States v. Peterson*, 64 F. R. 145; *Good Shot v. United States*, 104 Id. 257; *United States v. Lewis*, 111 Id. 630; *United States v. Cornell*, 2 Mason, 60, 25 Fed. Cas. 646; *Brown v. United States*, 2 Ind. Ter. 582; *Territory v. Yarberry*, 2 New Mex. 391, 450. This is constitutional. *United States v. Battle*, 209 U. S. 36, 52 L. ed. 670, 154 F. R. 540. This applies to the District of Columbia: *United States v. Guiteau*, 1 Mackey, 498; to a navy yard: *United States v. Donlan*, 5 Blatch. 284; to a warship moored at a dock on land ceded by a State to the United States: *United States v. Carter*, 84 F. R. 622; to Indian reservations within the territories as to offenses committed by persons other than tribal Indians: see Rev. Sts. § 2145; *Ex parte Crow Dog*, 109 U. S. 556, 27 L. ed. 1030; *Brown v. United States*, 146 F. R. 975; *United States v. Bridleman*, 7 Id. 894; *United States v. Rogers*, 4 How. 567, Hempst. 450; *United States v. Monte*, 3 New Mex. 173; but see *United States v. Bailey*, 1 McLean, 234; but not to an unsettled part of Oklahoma. *Matter of Moran*, 203 U. S. 96, 51 L. ed. 105. As to offenses committed by Indians see § 328. It applies to a fort, although in the cession of the property the State reserved the right to execute its civil and criminal processes there. *United States v. Cornell*, 2 Mason,

**Guano  
Islands**

91. It does not apply to a fort which was established as a military post on land of which the government has always held the fee, such fort having been erected subsequently to the admission into the Union of the State within whose boundaries the land is located. *United States v. Stahl*, Woolw. 192; *McCahon* (Kans.) 206. The same is true of land set apart as an Indian reservation. *Ex parte Sloan*, 4 Sawyer, 330. To give the United States local jurisdiction of lands owned by it, it is essential that the jurisdiction be acquired from or withheld from the State within which the lands are. 14 A. G. Op. 557; *United States v. Bateman*, 34 F. R. 86. There must also be some action on the part of the United States. *United States v. Tully*, 140 F. R. 899. Land temporarily rented to the United States for a camp is not within its exclusive jurisdiction. *United States v. Tierney*, 1 Bond, 571. This does not affect the enforcement of *civil* rights in a State court. *Madden v. Arnold*, 22 N. Y. App. Div. 240. But a State court has no right to enforce a statutory penalty for failure to deliver a telegram in a navy yard. *Western Union Tel. Co. v. Chiles*, 214 U. S. 274, 53 L. ed. 994. As to Alaska, see *Kie v. United States*, 11 Sawyer, 579, 27 F. R. 351; *United States v. Clark*, 46 F. R. 633.

*Clause 4.* *United States v. Meagher*, 37 F. R. 875. This is constitutional. *Jones v. United States*, 137 U. S. 202, 34 L. ed. 691.

See generally 7 A. G. Op. 721; 13 Id. 131. As to the district in which the case must be tried, see *United States v. Arwo*, 19 Wall. 486, 22 L. ed. 67.

**Murder  
defined**

SECTION 273. Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design

unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. **Murder Defined** Any other murder is murder in the second degree.

This section is partly taken from U. S. Rev. Sts. § 5339, but is greatly enlarged. See also § 5372.

See the notes to § 272. *Sparf v. United States*, 156 U. S. 51, 61, n., 39 L. ed. 343; *Battle v. United States*, 209 Id. 36, 52 L. ed. 670; *United States v. Terrel*, Hempst. 411, 413, 1 West. L. J. 246; *United States v. Leonard*, 2 F. R. 669. Formerly the statute did not define murder or degrees of murder. *United States v. Coppersmith*, 4 F. R. 198, 10 Rep. 517; *United States v. Outerbridge*, 5 Sawyer, 620; *United States v. King*, 34 F. R. 302; *United States v. Lewis*, 111 F. R. 630. Malice aforethought embraces all cases where the act was done with such cruel circumstances and means as indicate a wicked, depraved, and malignant spirit, as where the punishment inflicted by a person is inhuman in its nature and duration and wholly disproportioned to the offense. *United States v. Cornell*, 2 Mason, 91. If a seaman is debilitated and exhausted, so that he cannot go aloft without endangering his life, and the master with knowledge thereof malignantly compels him by moral or physical force to go aloft, and the seaman thereby comes to his death, the master is guilty of murder if he was actuated by malice, and of manslaughter if he was not so actuated. *United States v. Freeman*, 4 Mason, 505. Failure of a captain to stop a ship or lower a boat to rescue one who has fallen overboard is no more than manslaughter. *United States v. Knowles*, 4 Sawyer, 517. The willful killing of a soldier by the sergeant of the guard while on duty is not necessarily justifiable homicide. *United States v. Carr*, 1 Woods, 480. Insanity is a defense though remotely caused by intoxication. *United States v. Drew*, 5 Mason, 28. If two or more are jointly charged in the same indictment with a capital offense, they cannot demand a separate trial as of right. It is within the

**Murder  
defined**

discretion of the court. *United States v. Marchant*, 4 Mason, 158, 12 Wheat. 480, 6 L. ed. 700. It is now apparently immaterial where the death takes place. See § 336.

**Man-  
slaughter  
defined**

SECTION 274. Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

First. Voluntary — Upon a sudden quarrel or heat of passion.

Second. Involuntary — In the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

This section is partly taken from U. S. Rev. Sts. § 5341, but is greatly enlarged.

See notes to §§ 272, 273. *Wallace v. United States*, 162 U. S. 466, 40 L. ed. 1039; *United States v. Leonard*, 2 F. R. 669; *Kie v. United States*, 27 Id. 351; *United States v. King*, 34 Id. 302; *United States v. Clark*, 46 Id. 633; *United States v. Williams*, 103 Id. 938; *Roberts v. United States*, 126 Id. 897; *United States v. Terrel*, Hempst. 416, 1 West. L. J. 246; *State v. Kelly*, 76 Me. 331; *People v. Tyler*, 7 Mich. 161; *Peters v. United States*, 2 Okl. 116, 126. Manslaughter is not an offense against the United States unless it be committed in the places designated in § 273. *United States v. Imbert*, 4 Wash. C. C. 702; *United States v. Wiltberger*, 5 Wheat. 76, 5 L. ed. 37; *United States v. Holmes*, Id. 412, 5 L. ed. 122; 14 A. G. Op. 559. For a definition of the crime of manslaughter prior to the enactment of this statute, see *United States v. Armstrong*, 2 Curtis C. C. 446. "Malice in connection with the crime of killing is but another name for a certain condition of a man's heart or mind, and as no one can look into the heart or mind of another, the only way to decide upon its condition at the time of a killing is to infer it from the surrounding facts, and that inference is one of fact for a jury." *Stevenson v. United States*, 162 U. S. 313, 320, 40 L. ed. 980; *Addington v. United States*, 165 U. S. 184, 186, 41 L. ed. 679; *United States v. Meagher*, 37

F. R. 875, 880. After a conviction for murder the court has power to accept a plea of guilty of manslaughter, notwithstanding objection by the district attorney, if in the opinion of the court the evidence warrants a conviction for manslaughter but not for murder. **Man-  
slaughter  
defined** United States *v.* Linnier, 125 F. R. 83.

SECTION 275. Every person guilty of murder in the first degree shall suffer death. Every person guilty of murder in the second degree shall be imprisoned not less than ten years and may be imprisoned for life. Every person guilty of voluntary manslaughter shall be imprisoned not more than ten years. Every person guilty of involuntary manslaughter shall be imprisoned not more than three years, or fined not exceeding one thousand dollars, or both. **Punish-  
ment**

This section is founded on U. S. Rev. Sts. §§ 5339, 5343, but is enlarged.

See notes to §§ 272, 273, 274, and 330. *Kie v. United States*, 27 F. R. 351, 356; *State v. Kelly*, 76 Me. 331.

SECTION 276. Whoever shall assault another with intent to commit murder, or rape, shall be imprisoned not more than twenty years. Whoever shall assault another with intent to commit any felony, except murder, or rape, shall be fined not more than three thousand dollars, or imprisoned not more than ten years, or both. Whoever, with intent to do bodily harm, and without just cause or excuse, shall assault another with a dangerous weapon, instrument, or other thing, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. Whoever shall unlawfully strike, beat, or wound another, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. Whoever shall unlawfully assault another, shall be fined not more than three hundred dollars, or imprisoned not more than three months, or both. **Felonious  
assaults**

This section is founded on U. S. Rev. Sts. § 5346, but is greatly enlarged.

See note to § 272. *St. Clair v. United States*, 154 U. S. 134, 38 L. ed. 936; *United States v. Hunt*, 2 Story, 120;

**Felonious  
assaults**

United States *v.* Anderson, 17 Blatch. 238, 24 Fed. Cas. 813; United States *v.* Gallagher, 2 Paine, 447, 25 Fed. Cas. 1241; United States *v.* Lewis, 36 F. R. 449; United States *v.* Logan, 105 Id. 240. An assault upon a stowaway is punishable under this section and not under § 291. United States *v.* Small, 2 Curtis, 241, 27 Fed. Cas. 1128. Whether a belaying pin is a dangerous weapon is a question for the jury. *Id.*; see United States *v.* Lewis, 36 F. R. 449. While it is not necessary that a battery should be committed, it is essential that it should be possible. United States *v.* Salisbury, 2 N. Y. Leg. Obs. 53, 27 Fed. Cas. 930. Malice is not necessary. United States *v.* Lunt, 1 Sprague, 311, 26 Fed. Cas. 1021. Assault with intent to commit murder seems formerly to have been no crime. United States *v.* Williams, 6 Sawyer, 244, 2 F. R. 61, 9 Rep. 369; *Ex parte* Crow Dog, 109 U. S. 556, 27 L. ed. 1030; United States *v.* Barnaby, 51 F. R. 20.

**Other  
attempts  
at murder**

SECTION 277. Whoever shall attempt to commit murder or manslaughter, except as provided in the preceding section, shall be fined not more than one thousand dollars and imprisoned not more than three years.

This section is partly taken from U. S. Rev. Sts. § 5342. The words "except as provided in the preceding section" are inserted; and the places within which the offense may be committed, as provided in U. S. Rev. Sts. § 5339, are omitted. See § 272.

See note to § 276. United States *v.* Clark, 46 F. R. 633.

**Rape**

SECTION 278. Whoever shall commit the crime of rape shall suffer death.

This section is taken from U. S. Rev. Sts. § 5345.

See notes to §§ 272, 330. United States *v.* Coppersmith, 4 F. R. 198, 10 Rep. 517; *Ex parte* Crow Dog, 109 U. S. 556, 27 L. ed. 1030. This applies to the Indian country. United States *v.* Partello, 48 F. R. 670. It does not apply to an Indian. See §§ 328, 329; United States *v.* Ward, 42 F. R. 320.

SECTION 279. Whoever shall carnally and unlawfully know any female under the age of sixteen years, or shall be accessory to such carnal and unlawful knowledge before the fact, shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense be imprisoned not more than thirty years.

Having carnal knowledge of female under sixteen

This section is taken from the Act of Feb. 9, 1889, c. 120 (25 St. 658).

A conviction hereunder on an indictment which might be construed as charging a violation of this section or of § 278 is not erroneous. *In re Lane*, 135 U. S. 443, 34 L. ed. 219.

SECTION 280. Every master, officer, seaman, or other person employed on board of any American vessel who, during the voyage, under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both; but subsequent intermarriage of the parties may be pleaded in bar of conviction.

Seduction of female passenger on vessel.

This section is the same as U. S. Rev. Sts. § 5349, except that there is a change in the punishment.

SECTION 281. When a person is convicted of a violation of the section last preceding, the court may, in its discretion, direct that the amount of the fine, when paid, be paid for the use of the female seduced, or her child, if she have any; but no conviction shall be had on the testimony of the female seduced, without other evidence, nor unless the indictment is found within one year after the arrival of the vessel on which the offense was committed at the port of its destination.

Disposal of fine

This section is taken from U. S. Rev. Sts. §§ 5350, 5351, with slight changes in phraseology.

SECTION 282. Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neg-

Loss of life by misconduct of officers, etc., of vessels



Loss of life  
by miscon-  
duct of  
officers,  
etc., of  
vessels

lect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both: *Provided*, That when the owner or charterer of any steamboat or vessel shall be a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law, by which the life of any person is destroyed, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

This section is taken from the Act of March 3, 1905, c. 1454, § 5 (33 St. 1025). See U. S. Rev. Sts. § 5344. There are a few changes in phraseology and a change in punishment.

In an indictment framed under this section it is not necessary to aver, nor is it necessary to prove on the trial, a malicious intent. *Van Schaick v. United States*, 159 F. R. 847; *United States v. Warner*, 4 McLean, 463; Charge to Grand Jury, Newb. Adm. 323. Nor is it necessary to show willful misconduct, negligence, or inattention in the captain. *United States v. Farnham*, 2 Blatch. 528; *United States v. Keller*, 19 F. R. 633. Destruction of life is the essence of the offense. *Re Doig*, 4 F. R. 193. The loss of life must be the proximate result of the negligence. *United States v. Collyer*, Whart. Hom. 483, 25 Fed. Cas. 554. Negligence in the management of the fires and boilers is included as well as negligence in navigation. *The Henry Clay*, 11 Fed. Cas. 1164. The wrongful act of the pilot of one vessel which contributes to an accident does not justify neglect of duty by the pilot of another vessel. *United States v. Keller*, *supra*. The power to regulate navigation conferred upon Congress includes the power to regulate steamboats whenever they are used on the navigable waters of the United States. *United States v. Beacham*, 29 F. R. 284. An indictment need not aver that the Chesapeake Bay is one of the navigable waters of the

United States. The court must know this judicially. *Id.*; *United States v. Taylor*, 5 McLean, 242; *Holmes v. Oregon Co.*, 5 F. R. 523. This does not apply to foreign vessels. *La Bourgogne*, 104 F. R. 823, 824. Before the enactment of the present code it was held that the fact that the offense here described is within the jurisdiction of the courts of a State does not oust the jurisdiction of the Federal courts or prevent both from exercising jurisdiction. *United States v. Holtzhauer*, 40 F. R. 76, 78; *In re Welch*, 57 Id. 576; *People v. Welch*, 141 N. Y. 266.

Loss of life  
by misconduct of  
officers,  
etc., of  
vessels

SECTION 283. Whoever, with intent to maim or disfigure, shall cut, bite, or slit, the nose, ear, or lip, or cut out or disable the tongue, or put out or destroy an eye, or cut off or disable a limb or any member of another person; or whoever, with like intent, shall throw or pour upon another person, any scalding hot water, vitriol, or other corrosive acid, or caustic substance whatever, shall be fined not more than one thousand dollars, or imprisoned not more than seven years, or both.

Maiming,  
etc.

This section is founded on U. S. Rev. Sts. § 5348, but is much enlarged.

See note to § 272. *United States v. Askins*, 4 Cranch C. C. 98; *United States v. Terrel*, Hempst. 416, 1 West. L. J. 246; *Ex parte Crow Dog*, 109 U. S. 556, 27 L. ed. 1030; 14 A. G. Op. 559. The word "maliciously," formerly used, meant voluntarily, intentionally, unlawfully, and without excuse or justification. It is immaterial whether the act was done with premeditated design or not. If the indictment followed the words of the statute, it was sufficient without averring that by reason and means of the fact therein alleged the complainant was maimed and disfigured. *United States v. Gunther*, 5 Dak. 234. The particular mode of disabling, as by stabbing, cutting, shooting, or striking, or the particular weapon or instrument used, is not material. Nor is it confined to cutting by the use of some sharp instrument or edged tool. The real inquiry is whether a limb or member has been disabled or disfigured purposely and maliciously and with intent

**Maiming, etc.** to maim or disfigure. If so, the offense is complete. *United States v. Scroggins*, Hempst. 478.

**Robbery** SECTION 284. Whoever, by force and violence, or by putting in fear, shall feloniously take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years.

This section is founded on U. S. Rev. Sts. § 5372, but is greatly enlarged. See also § 5370.

See note to § 272. *United States v. Holmes*, 5 Wheat. 412, 5 L. ed. 122; *United States v. The Pirates*, Id. 184, 5 L. ed. 64; *Sparf v. United States*, 156 U. S. 51, 167, 39 L. ed. 343; *United States v. Jackalow*, 1 Black, 484, 17 L. ed. 225; *United States v. Terrel*, Hempst. 416, note; 1 West. L. J. 246; 2 A. G. Op. 19. For definitions of robbery under the former statutes see *United States v. Baker*, 5 Blatch. 6; *United States v. Palmer*, 3 Wheat. 610, 4 L. ed. 471; *United States v. Jones*, 3 Wash. C. C. 209. This section includes foreigners as well as citizens. A commission from a nation to private armed vessels to carry on war against its enemy on the high seas will afford protection, even in the courts of the enemy, against a charge of robbery or piracy. *United States v. Baker*, 5 Blatch. 6; see, however, *United States v. Jones*, 3 Wash. C. C. 209; *United States v. The Pirates*, 5 Wheat. 184, 5 L. ed. 64. The courts will not recognize the existence of a new government, foreign or domestic, until such recognition has been extended by the executive and legislative departments of this government. *United States v. Baker*, 5 Blatch. 6; *United States v. Palmer*, 3 Wheat. 610, 4 L. ed. 471.

**Arson of dwelling house** SECTION 285. Whoever shall willfully and maliciously set fire to, burn, or attempt to burn, or by means of a dangerous explosive destroy, or attempt to destroy, any dwelling house, or any store, barn, stable, or other building, parcel of a dwelling house, shall be imprisoned not more than twenty years.

This section is founded on U. S. Rev. Sts. § 5385, but is amended so as to punish the destruction or attempted de-

struction of the buildings by a dangerous explosive and by reducing the penalty from death to imprisonment for not more than twenty years. **Arson of dwelling house**

See note to § 272. This is substantially the common-law crime of arson. *United States v. Cardish*, 143 F. R. 640.

SECTION 286. Whoever shall maliciously set fire to, burn, or attempt to burn, or by any means destroy or injure, or attempt to destroy or injure, any arsenal, armory, magazine, ropewalk, ship house, warehouse, blockhouse, or barrack, or any storehouse, barn, or stable, not parcel of a dwelling house, or any other building not mentioned in the section last preceding, or any vessel built, building, or undergoing repair, or any light-house, or beacon, or any machinery, timber, cables, rigging, or other materials or appliances for building, repairing, or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval, or victualing stores, arms, or other munitions of war, shall be fined not more than five thousand dollars and imprisoned not more than twenty years. **Arson of other buildings, etc.**

This section is founded on U. S. Rev. Sts. § 5386, but is amended so as to punish the destruction of the buildings and to increase the penalty from not more than ten to not more than twenty years. See § 5387.

See note to § 272. It seems that the crime of arson mentioned in § 328 does not include this section. *United States v. Cardish*, 143 F. R. 640.

SECTION 287. Whoever shall take and carry away, with intent to steal or purloin, any personal property of another, shall be punished as follows: If the property taken is of a value exceeding fifty dollars, or is taken from the person of another, by a fine of not more than ten thousand dollars, or imprisonment for not more than ten years, or both; in all other cases, by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or both. If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or **Larceny**

**Larceny**

the sum which might be recovered in the absence thereof, shall be deemed to be the value of the property stolen.

This section is founded on U. S. Rev. Sts. § 5356, but is enlarged, larceny being divided into two classes.

See note to § 272. *United States v. Murphy*, 16 Pet. 203, 10 L. ed. 937; *United States v. Pridgeon*, 153 U. S. 48, 53, 38 L. ed. 631; *United States v. Clancey*, 1 Cranch C. C. 13; *United States v. Hare*, Id. 82; *United States v. Black*, 2 Id. 195; *United States v. Tierney*, 1 Bond, 571; *United States v. Ewing*, 47 F. R. 809; *In re Price*, 83 Id. 830. In view of the last sentence of this section it may be doubted whether the old cases holding that "personal goods" excluded choses in action are now applicable. See *United States v. Davis*, 5 Mason, 356, 25 Fed. Cas. 781; *United States v. Murray*, 1 Cranch C. C. 141. Personal property of the United States is included. *United States v. Maxon*, 5 Blatch. 360, 26 Fed. Cas. 1220. The taking must be with the intent to steal or purloin. *United States v. Holland*, 2 N. Y. Leg. Obs. 55, 26 Fed. Cas. 343; *United States v. Davis*, 5 Mason, 356, 26 Fed. Cas. 781. Cattle running at large upon a range are considered in the possession of the owner. *Murray v. United States*, 1 Ind. Ter. 28. The place where the property is stolen must fall within § 272, and the fact that it is subsequently carried over the high seas will not alone make an offense hereunder. *United States v. Davis*, 2 N. Y. Leg. Obs. 35, 25 Fed. Cas. 784; *United States v. Jackson*, 2 N. Y. Leg. Obs. 3, 26 Fed. Cas. 558. It was formerly unnecessary to state the value of the property taken. *Brown v. United States*, 146 F. R. 975.

**Receiving  
stolen  
goods, etc.**

SECTION 288. Whoever shall buy, receive, or conceal, any money, goods, bank notes, or other thing which may be the subject of larceny, which has been feloniously taken, stolen, or embezzled, from any other person, knowing the same to have been so taken, stolen, or embezzled, shall be fined not more than one thousand dollars and imprisoned not more than

three years; and such person may be tried either before or after the conviction of the principal offender.

Receiving  
stolen  
goods, etc.

This section is founded on U. S. Rev. Sts. § 5357. The word "embezzled" is twice inserted, and the last sentence "and such person," etc., is added.

See note to § 272. *Harless v. United States*, 1 Ind. Ter. 447. It is not necessary to allege that the owner of the goods did not consent. *Bise v. United States*, 144 F. R. 374. An indictment for receiving stolen cattle which fails to allege that the defendant knew they were stolen but which alleges that they were stolen and that the defendant received them with intent to deprive the owner of the use and benefit thereof is sufficient. *Bise v. United States*, 5 Ind. Ter. 602.

SECTION 289. Whoever, within the territorial limits of any State, organized Territory, or District, but within or upon any of the places now existing or hereafter reserved or acquired, described in section two hundred and seventy-two of this Act, shall do or omit the doing of any act or thing which is not made penal by any law of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or District in which such place is situated, by the laws thereof now in force would be penal, shall be deemed guilty of a like offense and be subject to a like punishment; and every such State, Territorial, or District law shall, for the purposes of this section, continue in force, notwithstanding any subsequent repeal or amendment thereof by any such State, Territory, or District.

Laws of  
States  
adopted for  
punishing  
wrongful  
acts, etc.

This section is founded on U. S. Rev. Sts. § 5391, and the Act of July 7, 1898, c. 576, § 2 (30 St. 717), but is rewritten in order to make the intention clear.

See note to § 272. *United States v. Pridgeon*, 153 U. S. 48, 54, 38 L. ed. 631; *Drury v. Lewis*, 200 Id. 1, 8, 50 L. ed. 343; *United States v. Clark*, 46 F. R. 633, 636; *United States v. World's Columbian Exposition*, 56 Id. 630, 633; *Exum v. State*, 90 Tenn. 501, 510. This is limited to the places described in § 272. *In re Kelly*, 71 F. R. 545; *United States v. Barney*, 5 Blatch. 294; but see *United States v.*

Laws of  
States  
adopted for  
punishing  
wrongful  
acts, etc.

Davis, 5 Mason, 356, 26 Fed. Cas. 781. This is not limited to crimes expressly made such by the United States statutes: *United States v. Franklin*, 174 F. R. 163; but has the same effect as though Congress had defined the offenses in the words of the State laws. *United States v. Coppersmith*, 4 F. R. 198, 10 Rep. 517. It is not limited to statutory crimes. *United States v. Wright*, 15 Int. Rev. Rec. 9, 28 Fed. Cas. 791. The punishment is that provided by the State laws. *Sharon v. Hill*, 24 F. R. 726. The State statutes of limitations, however, are not adopted. *United States v. Andem*, 158 F. R. 996.

As to the meaning of the words "*now in force*," see *United States v. Paul*, 6 Pet. 141, 8 L. ed. 348; *United States v. Barnaby* 51 F. R. 20, 23; *United States v. Tucker*. 122 Id. 518.

The criminal jurisdiction of the State courts is excluded from these places: *State v. Mack*, 23 Nev. 359; and apparently their jurisdiction to enforce a penalty: *Western Union Tel. Co. v. Chiles*, 214 U. S. 274, 53 L. ed. 994; see, however, *Madden v. Arnold*, 22 N. Y. App. Div. 240. This section does not apply to offenses by Indians. *United States v. King*, 81 F. R. 625.

## CHAPTER TWELVE

## PIRACY AND OTHER OFFENSES UPON THE SEAS

| SECTION   | SECTION  |
|---|--|
| 290. Piracy under the law of nations              | attempting to destroy vessel at sea                                |
| 291. Maltreatment of crew by officers of vessel   | 302. Robbery on shore by crew of piratical vessel                  |
| 292. Inciting revolt or mutiny on shipboard       | 303. Arming vessel to cruise against citizens of the United States |
| 293. Revolt and mutiny on shipboard               | 304. Piracy under color of a foreign commission                    |
| 294. Seaman laying violent hands on his commander | 305. Piracy by subjects or citizens of a foreign state             |
| 295. Abandonment of mariners in foreign ports     | 306. Running away with or yielding up vessel or cargo              |
| 296. Conspiracy to cast away vessel               | 307. Confederating, etc., with pirates                             |
| 297. Plundering vessel in distress, etc.          | 308. Sale of arms and intoxicants forbidden in Pacific islands     |
| 298. Attacking vessel with intent to plunder      | 309. Offenses under preceding section deemed on high seas          |
| 299. Breaking and entering vessel, etc.           | 310. "Vessels of the United States" defined                        |
| 300. Owner destroying vessel at sea               |  |
| 301. Other person destroying or                   |  |

SECTION 290. Whoever, on the high seas, commits the **Piracy** crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

This section is taken from U. S. Rev. Sts. § 5368. By the Act of Jan. 15, 1897, c. 29, § 2 (29 St. 487), the death penalty is changed to imprisonment for life.

The *Three Friends*, 166 U. S. 1, 52, 41 L. ed. 897; *United States v. Howard*, 3 Wash. C. C. 340; *United States v. Kessler*, 1 Baldw. 15; *United States v. Terrel*, Hempst. 416, note, 1 West. L. J. 246; *United States v. Chapels*, 2 Wheeler, Cr. Cas. 205; 9 A. G. Op. 455. This section is constitutional, and Congress has power to define and



**Piracy**

provide punishment for the crime of piracy. *United States v. Smith*, 5 Wheat. 153, 5 L. ed. 57; *United States v. The Pirates*, Id. 184, 5 L. ed. 64. For cases defining the phrase "*high seas*," see note to § 272. As to the effect of a commission from some unrecognized belligerent State, see *United States v. Klintock*, 5 Wheat. 144, 5 L. ed. 55. Prosecutions for piracy committed on the high seas, or in any place out of the jurisdiction of any particular State, should take place in the district where the offender is apprehended, or into which he may be first brought. 1 A. G. Op. 185.

**Maltreatment of crew by officers of vessel**

SECTION 291. Whoever, being the master or officer of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, beats, wounds, or without justifiable cause, imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, or inflicts upon them any cruel and unusual punishment, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. Nothing herein contained shall be construed to repeal or modify section forty-six hundred and eleven of the Revised Statutes.

This section is taken from U. S. Rev. Sts. § 5347, and the Act of March 3, 1897, c. 389, § 18 (29 St. 691). The words "of the United States" are added after "vessel," and the words "without justifiable cause" are transposed so as to appear before "imprisons." *Butler v. McLellan*, 1 Ware (U. S.), 219, 4 Fed. Cas. 905; *Roberts v. Skolfield*, 3 Ware (U. S.), 184, 20 Fed. Cas. 932; *Fuller v. Colby*, 3 Wood. & M. 1, 9 Fed. Cas. 980; *In re Smith*, 13 F. R. 25; *Riley v. Allen*, 23 Id. 46.

*Officer.* Any person who has authority to control the actions of the crew, or any part of it, by directing their work, is an officer, such as one of the "roustabouts" who is set over his fellows as a "captain of the watch." He may be held to answer a charge of beating and wounding any one so placed under his command. *United States v. Trice*, 30 F. R. 490.

*Crew.* Crew includes officers as well as seamen, and a master is liable for imprisoning the first mate. *United States v. Winn*, 1 Law Rep. 63, 28 Fed. Cas. 732; *Id.* 3 Sumner, 209, 28 Fed. Cas. 733. It does not include a stowaway, although he is forced to work for his food. *United States v. Small*, 2 Curtis C. C. 241, 27 Fed. Cas. 1128. The master when on board has generally sole authority to inflict punishment. If he is present when it is inflicted by a subordinate, and can prevent it, but does not, he is responsible. No other officer can punish seamen for misconduct to him personally when the master is on board, except by authority of the latter, express or implied, unless the ship's service requires instantaneous punishment to induce a seaman to do his duty. *United States v. Taylor*, 2 Sumner, 584, 28 Fed. Cas. 31.

Maltreatment of crew by officers of vessel

Under the former wording of this section "malice" meant a wrongful act done intentionally without just cause or excuse. The word covered all intentional wrongs not included in the words hatred or revenge. To authorize a conviction, malice, hatred, or revenge must have concurred with a want of justifiable cause to inflict the injury. *Id.*; *United States v. Harriman*, 1 Hughes, 525; *United States v. Freeman*, 4 Mason, 505.

When this statute was enacted, flogging was not a cruel or unusual punishment within its meaning. If flogging was inflicted from malice, the master should have been indicted for beating and wounding, and not for inflicting cruel and unusual punishment. *United States v. Collins*, 2 Curtis, 194, 25 Fed. Cas. 545. But since the Act of 1850 (Rev. Sts. § 4611), such punishment would be held cruel and unusual. A whaling vessel is within this section. *United States v. Cutler*, 1 Curtis, 501, 25 Fed. Cas. 740. See charge of Judge Curtis, 1 Curtis, 509. Whether the punishment was from malice, hatred, or revenge, is a question for the jury. *United States v. Alden*, 1 Sprague, 95, 24 Fed. Cas. 768. A prisoner having been extradited upon a charge of murder under Rev. Sts.

**Maltreatment of crew by officers of vessel**

§ 5339, the circuit court had no jurisdiction to put him upon trial upon an indictment under this section. *United States v. Rauscher*, 119 U. S. 407, 30 L. ed. 425.

All the elements required by this section must be established beyond a reasonable doubt. *United States v. Reed*, 86 F. R. 308. This section follows an American vessel wherever she may be on navigable waters, so that an offense committed on board such vessel is an offense against the United States, though the vessel be in the harbor or river of a foreign country. *United States v. Bennett*, 3 Hughes, 466, 24 Fed. Cas. 1111.

**Inciting revolt or mutiny on shipboard**

SECTION 292. Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

This section is the same as U. S. Rev. Sts. § 5359, except that the words "a vessel of the United States" are substituted for "any American vessel." *United States v. Lawrence*, 1 Cranch C. C. 94, 26 Fed. Cas. 885; *United States v. Stone*, 8 F. R. 232, 252. *In re Simpson*, 119 Id. 620.

"*Crew.*" The crew embraces all the officers as well as the common seamen. *United States v. Winn*, 3 Sumner, 209, 28 Fed. Cas. 733. Therefore, the mate (*United States v. Savage*, 5 Mason, 460, 27 Fed. Cas. 966), even though he may have been discharged by the master (*United States v. Huff*, 13 F. R. 630), the pilot in charge of the vessel (*United States v. Lynch*, 2 N. Y. Leg. Obs. 51, 26 Fed. Cas. 1033),

the cooper of the ship (*United States v. Thompson*, 1 Sumner, 168), and seamen for whom homeward passages are provided by United States consuls, pursuant to Rev. Sts. § 4577, are amenable to the provisions of this section. *United States v. Sharp*, Pet. C. C. 118, 27 Fed. Cas. 1041.

*American vessel.* This fact may be proved orally, and documentary evidence is not necessary. *United States v. Seagrist*, 4 Blatch. 420. The provisions of this section are not limited to offenses committed on such vessels as answer to the description of ships. *United States v. Kelly*, 4 Wash. C. C. 528. But a ship engaged in a whaling voyage without having surrendered her register or taken out an enrollment and license as required by St. 1793, c. 52, is not an American vessel within the intent of the Act of 1835 embodied in this section. *United States v. Rogers*, 3 Sumner, 342, 27 Fed. Cas. 890.

*Jurisdiction.* Under this section the circuit court has jurisdiction over all places and waters where the tide ebbs and flows. *United States v. Lynch*, *supra*. Therefore it had jurisdiction of an endeavor to make a revolt on a vessel about sixty yards from the wharf in New York harbor (*Id.*); on a vessel lying in the river about a mile and a half below the town of St. Ubes within the bar (*United States v. Smith*, 3 Wash. C. C. 78, 27 Fed. Cas. 1246); or if the vessel is in a navigable stream, and nothing is shown as to the jurisdiction of the State over the place where she was at anchor (*United States v. Staly*, 1 Wood. & M. 338, 27 Fed. Cas. 1290); or if she is in a foreign port (*United States v. Keefe*, 3 Mason, 475, 26 Fed. Cas. 685), and within an inclosed dock, in a foreign port, into which the tide flows at the will of the owner of the dock. *United States v. Roberts*, 2 N. Y. Leg. Obs. 99, 27 Fed. Cas. 822. A vessel is on the high seas if lying outside a harbor within three miles of the shore (*United States v. Smith*, 1 Mason, 147, 27 Fed. Cas. 1166); or if she is lying in a harbor fastened to the shore by cables, com-

Inciting  
revolt or  
mutiny on  
shipboard

municating with the land by her boats, and not within any inclosed dock, or at any pier or wharf. *United States v. Seagrist*, 4 Blatch. 420.

*Endeavor to make a revolt.* The statute does not define the offense of endeavoring to make a revolt, but it was, in *United States v. Kelly*, 11 Wheat. 417, 6 L. ed. 508, held to be within the power of the courts to define it. The definition there given was an attempt by the crew, or any one or more of them, to overthrow the legitimate authority of the commander, with intent to remove him from his command, or against his will to take possession of the vessel by assuming the government and navigation of her, or by transferring their lawful obedience from the commander to some other person. *United States v. Sharp*, Pet. C. C. 118, 27 Fed. Cas. 1041. It necessarily implies an attempt to stir up others of the crew to a resistance or rebellion against the lawful authority of the master and officers, and the offense is not committed if the accused does not attempt or endeavor to combine or excite others of the crew to aid in his unlawful purposes. *United States v. Smith*, 1 Mason, 147; *United States v. Savage*, 5 Id. 460. Resisting a single lawful order constitutes the offense as much as a general resistance or usurpation. *Id.* It is an endeavor to make a revolt to conspire to usurp the authority and command of the ship, and for such purpose to resist a lawful command of the master, or to incite others of the crew to such resistance (*United States v. Hemmer*, 4 Mason, 105, 26 Fed. Cas. 259); or to do anything with intent to accomplish such object (*Id.*); to combine to prevent the vessel from going to sea in accordance with the master's orders (*United States v. Nye*, 2 Curtis, 225, 27 Fed. Cas. 210); to refuse to do duty until the master complies with some improper request (*United States v. Gardner*, 5 Mason, 402, 25 Fed. Cas. 1258), although no orders are issued after the combination has been entered into (*United States v. Barker*, 5 Mason 404); to interpose and prevent one

of the crew from being punished for misbehavior, and compelling the master, by acts of intimidation and violence, to desist therefrom (*United States v. Morrison*, 1 Sumner, 448, 26 Fed. Cas. 1351); to induce the crew to disobey one lawful order (*United States v. Thompson*, 1 Sumner, 168, 28 Fed. Cas. 102); to refuse to perform the voyage under any person lawfully substituted as master (*United States v. Haines*, 5 Mason, 272; *United States v. Roberts*, 2 N. Y. Leg. Obs. 99; *United States v. Nye*, 2 Curtis, 225; *United States v. Hamilton*, 1 Mason, 443, 26 Fed. Cas. 93); unless such person be grossly incompetent, or unskillful, of profligate habits or cruel behavior. *United States v. Cassedy*, 2 Sumner, 582. If any of the crew stand by, inciting and encouraging those who are engaged in the illegal interference, they are equally guilty. *United States v. Morrison*, 1 Sumner, 448, 26 Fed. Cas. 1351. And it is not necessary that there should be any previous deliberate combination for mutual aid and encouragement or any preconcerted plan of operations. *Id.*

*What is not an endeavor to make a revolt.* An assault and battery committed by a seaman upon the master (*United States v. Lawrence*, 1 Cranch C. C. 94); a mere refusal by one or more seamen, without any attempt to encourage or aid or influence any others of the crew to the same act (*United States v. Barker*, 5 Mason, 404, 24 Fed. Cas. 985; *United States v. Cassedy*, 2 Sumner, 582; *United States v. Haines*, 5 Mason, 272, 26 Fed. Cas. 62; *United States v. Huff*, 13 F. R. 630); mere insolent conduct towards the master, disobedience of his orders, violence upon his person unaccompanied by other acts showing a purpose to subvert his command or conspiracy of the crew to displace the master (*United States v. Kelly*, 4 Wash. C. C. 528, 11 Wheat. 417, 6 L. ed. 508), is not an endeavor to make a revolt.

*Defenses.* A deviation from the voyage described in the shipping articles is a justification of a refusal to do further

Inciting  
revolt or  
mutiny on  
shipboard

Inciting  
revolt or  
mutiny on  
shipboard

duty on board. *United States v. Matthews*, 2 Sumner, 470, 26 Fed. Cas. 1207. The crew are justified in combining to compel the master to return to port because of the unseaworthiness of the vessel if they act *bona fide*, and she is actually unseaworthy; and also if they so act upon reasonable grounds and apparent unseaworthiness, and it is a matter of doubt whether she was unseaworthy or not. But if the vessel was clearly seaworthy, it is no defense. *United States v. Ashton*, 2 Sumner, 13, 24 Fed. Cas. 873. If they believe a vessel to be unseaworthy before the voyage is begun, they may lawfully refuse to go to sea in her. But this fact must be proved. *United States v. Nye*, 2 Curtis, 225. And they are not bound to sail until the vessel has been surveyed, if this is requested by them. This is so although the jury, in a doubtful case, should think her seaworthy. *United States v. Givings*, 1 Sprague, 75, 25 Fed. Cas. 1331. If the masts are rotten, the crew are not bound to rely upon the master's verbal promise that he will keep in certain latitudes, and carry only such sail as the masts are sufficient for, and they may resist an attempt on the master's part to compel them to go to sea. If, in such resistance, one of their number does an unlawful act, he alone is responsible for it. *Id.*; *The Hibernia*, *Id.* 78, 12 Fed. Cas. 112. In *United States v. Staly*, 1 Wood. & M. 338, it was held that the crew cannot refuse obedience subsequent to the voyage if the vessel is believed to be unseaworthy. Combination and intimidation may be lawful if from the improper conduct of the master the crew have reason to believe and do believe that they would be subjected to unlawful and cruel or oppressive treatment, or that a great wrong was about to be inflicted on one of them. *United States v. Borden*, 1 Sprague, 374, 24 Fed. Cas. 1202. But seamen who claim that by their articles they are not bound to go on a certain voyage and perform certain duties required of them, must assert such claim at the time the orders which they disobey

are given. *United States v. Lynch*, 2 N. Y. Leg. Obs. 51, 26 Fed. Cas, 1033.

*Indictment.* Under the Act of 1790 it was not necessary, **Inciting revolt or mutiny on shipboard** in an indictment for an endeavor to make a revolt, to allege that it was committed on the high seas. *United States v. Hamilton*, 1 Mason, 443; *United States v. Keefe*, 3 Id. 475; *United States v. Smith*, 3 Wash. 78. Nor need the indictment allege that the master was, at the time, in the peace of the United States, or that he was an American citizen (*United States v. Thompson*, 1 Sumner, 168); nor that the defendant had been tried and convicted or acquitted by a foreign tribunal. *United States v. Stevens*, 4 Wash. C. C. 547. To sustain an indictment under this section there should be some evidence that the attack on the master was made with intent to take possession of the vessel (*United States v. Smith*, 3 Wash. C. C. 78); and a confederacy or combination must be shown between two or more seamen to refuse to do further duty and to resist the officer's lawful commands. *United States v. Cassedy*, 2 Sumner, 582, 25 Fed. Cas. 321. Confinement of the captain, under § 12 of the Act of 1790, was a misdemeanor, and a revolt under § 8 of said Act was a capital offense, and an indictment charging both offenses in the same count was held bad. *United States v. Sharp*, Pet. C. C. 131. It is sufficient if the crime of endeavoring to make a revolt is charged in the words of the statute. *United States v. Seagrist*, 4 Blatch. 420, 27 Fed. Cas. 1002. An indictment for confining the master, and for an assault committed on the high seas in the outer road of the harbor, is sustained by proof that the offenses were committed in the inner road and in port. *United States v. Stevens*, *supra*.

*Confinement of the master.* If the conduct of the crew toward the master is such as would reasonably intimidate a firm man, this clause is violated. The case is not altered where the master went armed, if it was necessary for him to do so for his protection. Seizing his person for a moment,



**Inciting  
revolt or  
mutiny on  
shipboard**

is a confinement which is not excused by a previous battery on the seamen, administered for the purpose of securing performance of their duty. *United States v. Bladen*, Pet. C. C. 213, 24 Fed. Cas. 1161. Confinement is not limited to mere personal restraint by seizing the master and preventing the free movement of his body, nor to imprisonment in any specific place. It is equally a confinement to prevent him from free movement about the ship by force or intimidation, as by limiting him to walking on a particular part of the deck. *United States v. Hemmer*, 4 Mason, 105; *United States v. Huff*, 13 F. R. 630, 4 Crim. L. Mag. 36. The confinement may be accomplished by moral as well as by physical restraint, but it must be an illegal restraint without justifiable cause. *United States v. Thompson*, 1 Sumner, 168. But in order to constitute the offense it must be feloniously done. *United States v. Henry*, 4 Wash. C. C. 428, 26 Fed. Cas. 276. If the seizure is unlawful, it is a confinement regardless of the intent, as for the purpose of inflicting chastisement. *United States v. Savage*, 5 Mason, 460, 27 Fed. Cas. 966. It may be committed in port as well as on the high seas. *United States v. Stevens*, 4 Wash. C. C. 547, 27 Fed. Cas. 1325. One who joins in the general conspiracy, and countenances violence by his presence, is guilty of the offense of confining the master, though he does not use force or threats to compel him to resign. *United States v. Sharp*, Pet. C. C. 118, 27 Fed. Cas. 1041. Though the master's acts may justify the crew in placing restraint upon him, yet they should proceed with great caution, and such restraint must end the moment the occasion for it has passed. *Id.*

*Conspiracy.* One cannot be an accomplice without intent. If, therefore, at the time some of the crew were attacking the captain, others attack the mate, intending thereby to assist the former, they are guilty, but if they were distinct affrays, they are not. *United States v. Henry*, 4 Wash. C. C. 428, 26 Fed. Cas. 276.

SECTION 293. Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than two thousand dollars and imprisoned not more than ten years.

**Revolt or  
mutiny on  
shipboard**

This section is the same as U. S. Rev. Sts. § 5360, except that the words "a vessel of the United States" are substituted for "an American vessel."

United States *v.* Givings, 1 Sprague, 75, 25 Fed. Cas. 1331. See note, § 292. There is a revolt "where the crew or any part of them throw off all obedience to the commander, and forcibly take possession of the vessel by assuming and exercising command and navigation of her, or by transferring their obedience from the lawful commander to one who has usurped the command." United States *v.* Haskell, 4 Wash. C. C. 402, 26 Fed. Cas. 207. It is an overthrowing of the legitimate authority of the commander with intent to remove him from the command, or against his will to take possession of the vessel by assuming the command and navigation of her. United States *v.* Forbes, Crabbe, 558, 25 Fed. Cas. 1141. It is immaterial that the command is afterward regained, or how long the vessel is under the control of the mutineers. United States *v.* Haskell, *supra*; 14 A. G. Op. 589. The master is prevented in the free and lawful exercise of his authority, if he be prevented from carrying into effect one lawful command. United States *v.* Borden, 1 Sprague, 374, 24 Fed. Cas. 1202. It is no excuse for participating in a revolt that one was in fear of death, unless it was such a fear as a man of ordinary courage and fortitude might yield to. United

**Revolt or  
mutiny on  
shipboard**

*States v. Haskell* and *United States v. Borden, supra.* The crew have no right to disarm the captain, though he is using a deadly weapon, if they are in a mutinous and seditious state and resisting his lawful commands. Foreign seamen on board an American vessel are subject to the statutes of the United States. *United States v. Peterson*, 1 Wood. & M. 305, 27 Fed. Cas. 515. Mere disobedience of orders by one or two of the crew without combination or offensive language is not a revolt. *United States v. Forbes, supra.* The pilot's orders are entitled to the same obedience as the master's. *Id.* Proof that a vessel sailed from and to an American port, and was apparently owned and controlled by an American citizen, is sufficient to show the nationality of the vessel. *United States v. Peterson, supra.* If the indictment contains two counts for offenses committed at the same time and place, and of the same class, as one for a revolt and one for an attempt to excite, judgment will not be arrested, though the defendant was found guilty on both. *Id.* The indictment must allege the acts charged to have been done unlawfully. *United States v. Borden, supra.*

**Seaman  
laying vio-  
lent hands  
on com-  
mander**

SECTION 294. Whoever, being a seaman, lays violent hands upon his commander, thereby to hinder and prevent his fighting in defense of his vessel or the goods intrusted to him, is a pirate, and shall be imprisoned for life.

This section is taken from U. S. Rev. Sts. § 5369. By the Act of Jan. 15, 1897, c. 29, § 2 (29 St. 487), the death penalty is changed to imprisonment for life. *United States v. Kessler*, 1 Baldw. 15, 26 Fed. Cas. 766.

**Abandon-  
ment of  
mariner in  
foreign port**

SECTION 295. Whoever, being master or commander of a vessel of the United States, while abroad, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him,

as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

Abandonment of mariner in foreign port

This section is the same as U. S. Rev. Sts. § 5363, except that in the first line the words "belonging, in whole or in part, to any citizen" are omitted and the words "or both" are added at the end.

It is sufficient to constitute this offense if any of the officers or mariners are either forced on shore or left behind, or are refused a return home. *United States v. Netcher*, 1 Story, 307, 27 Fed. Cas. 89. The offense is committed where the master causes a mariner to be imprisoned in a foreign jail, for the use of abusive language or misconduct, so that he is unable to return, unless a more moderate punishment on board ship would not be effectual and safe. *Id.*; *United States v. Ruggles*, 5 Mason, 192, 27 Fed. Cas. 912. It is not necessary that actual physical force be used. It is sufficient if one leaves the ship upon a well-founded fear of danger to his life should he continue on board to perform the home voyage. *United States v. Riddle*, 4 Wash. C. C. 644, 27 Fed. Cas. 809. The words "officer or mariner" include all persons, other than the captain, employed under shipping articles in any capacity on the vessel. *Case of Chinese Laborers*, 13 F. R. 291. The home referred to is the home port of the vessel for the voyage, and not the home of the officer or mariner, if he happen to be a foreigner. *United States v. Coffin*, 1 Sumner, 394, 25 Fed. Cas. 485. The act must be done without justifiable cause, and must be done maliciously. "Maliciously" means with a willful disregard of right and duty, or doing an act against one's conviction of duty. *United States v. Ruggles*, *supra*; *United States v. Coffin*, *supra*. Consent of the mariner is justification. 19 A. G. Op. 391. The requirement that the officer or mariner should be in a condition and willing to re-

Abandon-  
ment of  
mariner in  
foreign port

turn, applies only to the offense of refusing to bring home again. *United States v. Netcher, supra.*

The commission of some offense of a high and aggravated character, or long and habitual disregard of duty, or continued misconduct, unrepented of and unchanged, will authorize a discharge in a foreign port. *United States v. Coffin, supra.* And so will an attempt to commit a rape upon a female passenger. *Nieto v. Clark*, 1 Cliff. 145, 18 Fed. Cas. 236. But such a discharge as the maritime law might authorize is not justifiable. *United States v. Coffin, supra.* The *onus probandi* is on the master to show justifiable cause. *Id.*

Conspiracy  
to cast  
away  
vessel

SECTION 296. Whoever, on the high seas, or within the United States, willfully and corruptly conspires, combines, and confederates with any other person, such other person being either within or without the United States, to cast away or otherwise destroy any vessel, with intent to injure any person that may have underwritten or may thereafter underwrite any policy of insurance thereon or on goods on board thereof, or with intent to injure any person that has lent or advanced, or may lend or advance, any money on such vessel on bottomry or respondentia; or whoever, within the United States, builds, or fits out, or aids in building or fitting out, any vessel with intent that the same be cast away or destroyed, with the intent hereinbefore mentioned, shall be fined not more than ten thousand dollars and imprisoned not more than ten years.

This section is the same as U. S. Rev. Sts. § 5364.

This section is constitutional. *United States v. Cole*, 5 McLean, 513, 25 Fed. Cas. 493. Its object is to protect commerce, and the protection to underwriters is incidental. It applies to internal as well as foreign commerce. Any combination of two or more persons to destroy a vessel or cargo consummates the offense, though no harm has been done to either. *Id.* But intent to injure underwriters is an essential ingredient of the crime, and must be alleged. *United States v. Hand*, 6 McLean, 274, 26 Fed. Cas. 102.

SECTION 297. Whoever plunders, steals, or destroys any money, goods, merchandise, or other effects, from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States, shall be fined not more than five thousand dollars and imprisoned not more than ten years; and whoever willfully obstructs the escape of any person endeavoring to save his life from such vessel, or the wreck thereof; or whoever holds out or shows any false light, or extinguishes any true light, with intent to bring any vessel sailing upon the sea into danger, or distress, or shipwreck, shall be imprisoned not less than ten years and may be imprisoned for life.

**Plundering  
vessel in  
distress,  
etc.**

This section is taken from U. S. Rev. Sts. § 5358. In the middle thereof the words "shall be fined not more than five thousand dollars and imprisoned not more than ten years" are inserted, and at the end the penalty is changed.

This section is constitutional, and is intended to prohibit and punish such plunder, stealing or destroying of property therein named, whether the act be done on shore or in any of the enumerated places below high-water mark. *United States v. Coombs*, 12 Pet. 72, 9 L. ed. 1004; *United States v. Pitman*, 1 Sprague, 196, 15 Law Rep. 36, 27 Fed. Cas. 540; *United States v. Kessler*, Baldw. 15, 26 Fed. Cas. 766.

An indictment which alleged that the defendant "furnished and loaned" a skiff to be used by others in plundering a wrecked vessel was held good. *United States v. Sanche*, 7 F. R. 715. The indictment need not distinguish between acts supposed to be characterized as "plundering," and other acts supposed to be properly designated as "stealing" or "destroying," nor between acts of depredation committed on the wreck, and such acts committed on property belonging to, but separated from it. *United States v. Stone*, 8 F. R. 232. It is not larceny alone which is punishable under this section, but any act of depredation, whether it be of the character that would be piracy if committed on the high seas, robbery

**Plundering  
vessel in  
distress,  
etc.**

or other forcible taking, theft, trespass, or other malicious mischief, or any fraudulent and criminal breach of trust, if committed on land where the common or statute law prevails. No specific intent is necessary to constitute the offense. The value of the goods is immaterial. *Id.* Until goods are removed from the place where landed, or thrown ashore from the stranded or wrecked vessel, or cease to be under the charge of the officers or other parties interested, the act would apply if a larceny of them were committed, even though the vessel may in the meantime have gone entirely to pieces and disappeared from the sea. But the act was not intended to reach cases where the property abandoned by the officers or other parties interested, is recovered by third persons. *United States v. Smiley*, 6 Sawyer, 640, 27 Fed. Cas. 1132. Where property abandoned by the officers of the vessel lies under water within one hundred and fifty feet of the Mexican shore, the Federal courts of the United States have no jurisdiction under this section. *Id.*

**Attacking  
vessel with  
intent to  
plunder**

SECTION 298. Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, by surprise or by open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

This section is taken from U. S. Rev. Sts. § 5361. The words "on any other waters" are substituted for "in any arm of the sea, or in any river, haven, creek, basin, or bay," and the words "and out of the jurisdiction of any particular state" are stricken out. For a definition of "plunder" see *United States v. Stone*, 8 F. R. 232, 246. See also note to § 297.

**Breaking  
and enter-  
ing vessel,  
etc.**

SECTION 299. Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular

State, breaks or enters any vessel, with intent to commit any felony, or maliciously cuts, spoils, or destroys any cordage, cable, buoys, buoy-rope, head-fast, or other fast, fixed to the anchor or moorings belonging to any vessel, shall be fined not more than one thousand dollars and imprisoned not more than five years.

**Breaking and entering vessel, etc.**

This section is taken from U. S. Rev. Sts. § 5362. The words "on any other waters within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State" are substituted for "in any other of the places mentioned in the preceding section," and the words "with intent to commit any felony" are transposed after "any vessel."

SECTION 300. Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel, of which he is owner, in whole or in part, with intent to prejudice any person that may underwrite any policy of insurance thereon, or any merchant that may have goods thereon, or any other owner of such vessel, shall be imprisoned for life or for any term of years.

**Owner destroying vessel at sea**

This section is taken from U. S. Rev. Sts. § 5365. The words "or on any other waters within the admiralty and maritime jurisdiction of the United States" are inserted. See the Act of Aug. 6, 1894, c. 227, § 1 (28 St. 233).

The word "destroys" means to unfit a vessel for service beyond the hope of recovery by the use of ordinary means. Casting away is a species of destroying. *United States v. Johns*, 4 Dall. 412, 1 Wash. C. C. 363. The original act used the words "any person or persons," and was held to include corporations and bodies politic. *United States v. Amedy*, 11 Wheat. 392, 6 L. ed. 502. The law punishes the act when done with an intent to prejudice, and does not require actual prejudice. It does not prescribe that the policy should be valid. *Id.* The master of a vessel may be indicted and convicted for willfully destroying a vessel with



**Owner  
destroying  
vessel at  
sea**

intent to defraud her underwriters, though the owner be on board, and consent to or command the destruction of the vessel. *United States v. Jacobson*, 1 Brun. Coll. Cas. 410, 26 Fed. Cas. 567. The indictment must state that the act charged was done to the prejudice of the underwriters or of a merchant who had goods thereon. *United States v. Vanranst*, 3 Wash. C. C. 146. Under the former wording in order to give Federal courts jurisdiction of the offenses specified in this section and in Rev. Sts. § 301, they must have been committed upon the high seas, and not merely upon waters within the jurisdiction of the United States. *United States v. Wilson*, 3 Blatch. 435; *Beaston v. Farmers' Bank*, 12 Pet. 102, 135, 9 L. ed. 1017. A land-locked bay within the island of Bermuda is not "high seas." *United States v. Robinson*, 4 Mason, 307, 27 Fed. Cas. 871.

**Other per-  
son destroy-  
ing, or  
attempting,  
of vessel  
at sea**

SECTION 301. Whoever, not being an owner, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel of the United States to which he belongs, or, willfully, with intent to destroy the same, sets fire to any such vessel, or otherwise attempts the destruction thereof, shall be imprisoned not more than ten years.

This section is taken from U. S. Rev. Sts. §§ 5366, 5367. There are several changes including the insertion of the words "or any other waters within the admiralty and maritime jurisdiction of the United States." See the Act of Aug. 6, 1894, c. 227, § 2 (28 St. 233). *United States v. Vanranst*, 3 Wash. C. C. 146, 28 Fed. Cas. 360, and *United States v. Wilson*, 3 Blatch. 435, 28 Fed. Cas. 718. See note, § 300. The offense of willfully setting fire to a ship at sea with intent to burn her being charged in the indictment in the words of the statute creating the crime, the allegation was sufficient without the allegation of the word "feloniously." *United States v. McAvoy*, 4 Blatch. 418; 18 How. Pr. 380, 26 Fed. Cas. 1044.

SECTION 302. Whoever, being engaged in any piratical cruise, or enterprise, or being of the crew of any piratical vessel, lands from such vessel, and on shore commits robbery, is a pirate, and shall be imprisoned for life.

**Robbery on shore by piratical crew**

This section is taken from U. S. Rev. Sts. § 5371. By the Act of Jan. 15, 1897, c. 29, § 2 (29 St. 487), the death penalty is changed to imprisonment for life.

SECTION 303. Whoever, being a citizen of the United States, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming, any private vessel of war or privateer, with intent that such vessel shall be employed to cruise or commit hostilities upon the citizens of the United States, or their property, or whoever takes the command of or enters on board of any such vessel, for such intent, or who purchases any interest in any such vessel with a view to share in the profits thereof, shall be fined not more than ten thousand dollars and imprisoned not more than ten years. The trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

**Arming vessel to cruise against citizens**

This section is the same as U. S. Rev. Sts. § 5284.

SECTION 304. Whoever, being a citizen of the United States, commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state, or on pretense of authority from any person, is, notwithstanding the pretense of such authority, a pirate, and shall be imprisoned for life.

**Piracy under color of foreign commission**

This section is the same as U. S. Rev. Sts. § 5373. By the Act of Jan. 15, 1897, c. 29, § 2 (29 St. 487), the death penalty is changed to imprisonment for life. See *United States v. Palmer*, 3 Wheat. 610, 4 L. ed. 471; 1 A. G. Op. 85; *United States v. Terrel*, Hempst. 411, 416, note, 1 West. L. J. 246; *United States v. Hutchings*, 1 Brun. Coll. Cas. 489, 2 Wh. Cr. Cas. 543, 26 Fed. Cas. 440. Charge to Grand Jury, 2 Sprague, 279; 1 A. G. Op. 249. This section has no appli-

**Piracy  
under color  
of foreign  
commission**

cation to foreigners. It changes the rule as respects citizens of the United States who take service under a commission to a vessel from an enemy of their country, and declares that, as respects them, the commission shall not be admitted as a defense. *United States v. Baker*, 5 Blatch. 6, 24 Fed. Cas. 962; 3 A. G. Op. 120.

**Piracy by  
aliens**

SECTION 305. Whoever, being a citizen or subject of any foreign state, is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the state of which the offender is a citizen or subject, when by such treaty such acts are declared to be piracy, is guilty of piracy, and shall be imprisoned for life.

This section is taken from U. S. Rev. Sts. § 5374. By the Act of Jan. 15, 1897, c. 29, § 2 (29 St. 487), the death penalty is changed to imprisonment for life. Charge to Grand Jury, 2 Sprague, 279, 285.

**Running  
away with,  
or yielding  
up vessel  
or cargo**

SECTION 306. Whoever, being a captain or other officer or mariner of a vessel upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, piratically or feloniously runs away with such vessel, or with any goods or merchandise thereof, to the value of fifty dollars, or who yields up such vessel voluntarily to any pirate, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

This section is the same as U. S. Rev. Sts. § 5383. "Piratically and feloniously runs away with a vessel" means a running away with a vessel with the wrongful and fraudulent intent thereby to convert it to the taker's use, and make it his own property against the will of the owner. The intent must be *animo furandi*, though the taking need not be with personal force and violence. *United States v. Tully*, 1 Gall. 247, 28 Fed. Cas. 226; *United States v. Kessler*, Baldw. 15, 26 Fed. Cas. 766. If one other than the captain is charged with the offense, it must be shown that the vessel was taken from

the command of the captain by the accused, and without the former's consent, for some period of time, with felonious intent to convert her to the use of the person or persons who were concerned in the taking. *United States v. Haskell*, 4 Wash. C. C. 402, 2 Wh. Cr. Cas. 101, 26 Fed. Cas. 207. If a master sells a vessel in accordance with the orders of the owners, it is no offense hereunder if he fails to remit the proceeds. 2 A. G. Op. 19.

**Running  
away with,  
or yielding  
up vessel  
or cargo**

SECTION 307. Whoever attempts or endeavors to corrupt any commander, master, officer, or mariner to yield up or to run away with any vessel, or with any goods, wares, or merchandise, or to turn pirate, or to go over to or confederate with pirates, or in any wise to trade with any pirate, knowing him to be such, or furnishes such pirate with any ammunition, stores, or provisions of any kind, or fits out any vessel knowingly and, with a design to trade with, supply, or correspond with any pirate or robber upon the seas; or whoever consults, combines, confederates, or corresponds with any pirate or robber upon the seas, knowing him to be guilty of any piracy or robbery; or whoever, being a seaman, confines the master of any vessel, shall be fined not more than one thousand dollars and imprisoned not more than three years.

**Confeder-  
ating, etc.,  
with pirates**

This section is the same as U. S. Rev. Sts. § 5384. *United States v. Howard*, 3 Wash. 340, 26 Fed. Cas. 390.

SECTION 308. Whoever, being subject to the authority of the United States, shall give, sell, or otherwise supply any arms, ammunition, explosive substance, intoxicating liquor, or opium to any aboriginal native of any of the Pacific Islands lying within the twentieth parallel of north latitude and the fortieth parallel of south latitude, and the one hundred and twentieth meridian of longitude west and one hundred and twentieth meridian of longitude east of Greenwich, not being in the possession or under the protection of any civilized power, shall be fined not more than fifty dollars, or imprisoned not more than three months, or both. In addition to such punishment, all articles of a similar nature to those in respect to which an offense has been committed, found in the possession of the offender, may be declared forfeited. If it shall appear to the court that such opium, wine, or spirits have been given

**Selling  
arms, intoxi-  
cants, etc., in  
Pacific  
Islands**

**Selling  
arms, intox-  
icants, etc.,  
in Pacific  
Islands**

*bona fide* for medical purposes, it shall be lawful for the court to dismiss the charge.

This section is the same as the Act of Feb. 14, 1902, c. 18, §§ 1, 2 (32 St. 33).

**Offenses  
deemed on  
high seas**

SECTION 309. All offenses against the provisions of the section last preceding, committed on any of said islands or on the waters, rocks, or keys adjacent thereto, shall be deemed committed on the high seas on board a merchant ship or vessel belonging to the United States, and the courts of the United States shall have jurisdiction accordingly.

This section is the same as the Act of Feb. 14, 1902, c. 18, § 3 (32 St. 33).

**Vessels of  
the United  
States  
defined**

SECTION 310. The words "vessel of the United States" wherever they occur in this chapter, shall be construed to mean a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof.

This section is new.

## CHAPTER THIRTEEN

### CERTAIN OFFENSES IN THE TERRITORIES

| SECTION   | SECTION  |
|---|--|
| 311. Places within which sections of this chapter shall apply | 318. Fornication   |
| 312. Circulation of obscene literature; promoting abortion    | 319. Certificates of marriage; penalty for failure to record |
| 313. Polygamy   | 320. Prize fights, bull fights, etc.                         |
| 314. Unlawful cohabitation                                    | 321. Definition of "Pugilistic encounter"                    |
| 315. Joinder of counts  | 322. Train robberies in Territories, etc.                    |
| 316. Adultery   |  |
| 317. Incest   |  |

SECTION 311. Except as otherwise expressly provided, the offenses defined in this chapter shall be punished as herein-  
after provided, when committed within any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States. Places applicable

This section is new.

SECTION 312. Whoever shall sell, lend, give away, or in any manner exhibit, or offer to sell, lend, give away, or in any manner exhibit, or shall otherwise publish or offer to publish in any manner, or shall have in his possession for any such purpose, any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion, or shall advertise the same for sale, or shall write or print, or cause to be written or printed, any card, circular, book, pamphlet, advertisement, or notice of any kind, stating when, where, how, or of whom, or by what means, any of the articles above mentioned can be purchased or obtained, or shall manufacture, draw, or print, or in anywise make any of such articles, shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both. Circulating obscene literature, etc.

This section is taken from U. S. Rev. Sts. § 5389. There are a few changes including the addition of the words "or both" at the end. See § 311. See notes to § 211. *United States v. Williams*, 3 F. R. 484, 488.

**Polygamy  
defined**

SECTION 313. Every person who has a husband or wife living, who marries another, whether married or single, and any man who simultaneously, or on the same day, marries more than one woman, is guilty of polygamy, and shall be fined not more than five hundred dollars and imprisoned not more than five years. But this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been dissolved by a valid decree of a competent court, nor to any person by reason of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract.

This section is taken from U. S. Rev. Sts. § 5352. See § 311. *Miles v. United States*, 103 U. S. 304, 26 L. ed. 481; *Clawson v. United States*, 114 Id. 477, 29 L. ed. 179; *Mormon Church v. United States*, 136 Id. 1, 64, 140 Id. 665, 35 L. ed. 592; *France v. Connor*, 161 U. S. 65, 40 L. ed. 619, 3 Wyom. 445; *In re Murphy*, 5 Id. 297; *Wenner v. Smith*, 4 Utah, 238; *United States v. Crawford*, 6 Mackey, 319. This statute is constitutional. *Reynolds v. United States*, 98 U. S. 145, 25 L. ed. 244. An indictment hereunder need not aver that the defendant was a male person. *United States v. Cannon*, 4 Utah, 122, affirmed, 116 U. S. 55, 29 L. ed. 561; vacated, 118 Id. 355, 30 L. ed. 220. Religious belief is immaterial. *Davis v. Beason*, 133 U. S. 333, 342, 33 L. ed. 637; *United States v. Reynolds*, 1 Utah, 226. This applies to the District of Columbia. *Knight v. United States*, 6 App. D. C. 1; *Chase v. United States*, 7 Id. 149; see § 311. As to disqualifications of jurors, see *People v. Hopt*, 3 Utah, 396. *United States v. Bassett*, 5 Id. 131.

**Unlawful  
cohabitation**

SECTION 314. If any male person cohabits with more than one woman, he shall be fined not more than three hundred dollars, or imprisoned not more than six months, or both.

This section is taken from the Act of March 22, 1882, c. 47, § 3 (22 St. 31). See § 311. "Cohabitation" means cohabita-

tion as husband and wife. *United States v. Tenney*, 2 Ariz. 127; *United States v. Kuntze*, 2 Idaho, 480. It must be proved as a fact. *United States v. Langford*, Id. 561. It is not necessary, however, to give evidence of sexual intercourse. *United States v. Cannon*, 4 Utah, 122, 116 U. S. 55, 29 L. ed. 561, 118 Id. 355, 30 L. ed. 220; *United States v. Musser*, 4 Utah, 153; *United States v. Snow*, Id. 280. As a man is conclusively presumed to cohabit with his lawful wife, cohabitation with a plural wife is an offense hereunder. *United States v. Clark*, 6 Utah, 120. There is no provision of law under which the Supreme Court of the United States can review a judgment of the Supreme Court of a Territory on a conviction for cohabiting with more than one woman under 22 St. 30. *Snow v. United States*, 118 U. S. 346, 30 L. ed. 207. See also *Re Snow*, 120 U. S. 274, 30 L. ed. 658.

Unlawful  
cohabita-  
tion

SECTION 315. Counts for any or all of the offenses named in the two sections last preceding may be joined in the same information or indictment. Joinder of counts

This section is the same as the Act of March 22, 1882, c. 47, § 4 (22 St. 31).

SECTION 316. Whoever shall commit adultery shall be imprisoned not more than three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery. Adultery

This section is the same as the Act of March 3, 1887, c. 397, § 3 (24 St. 635).

*United States v. Sutton*, 47 F. R. 129; *United States v. Baum*, 74 Id. 43. As to *In re Mayfield*, 141 U. S. 107, 35 L. ed. 635, see § 328. The fact that the defendant has served a sentence for unlawful cohabitation is a defense in a prosecution for adultery for the same acts. *Nielsen*, petitioner, 131 U. S. 176, 33 L. ed. 118.



**Incest  
defined**

SECTION 317. Whoever, being related to another person within and not including the fourth degree of consanguinity computed according to the rules of the civil law, shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, shall be deemed guilty of incest, and shall be imprisoned not more than fifteen years.

This section is the same as the Act of March 3, 1887, c. 397, § 4 (24 St. 636), except that there is a slight change in punishment. *In re Nelson*, 69 F. R. 712. As to *Ex parte Hart*, 157 F. R. 130, see § 328.

**Fornication**

SECTION 318. If any unmarried man or woman commits fornication, each shall be fined not more than one hundred dollars, or imprisoned not more than six months.

This section is the same as the Act of March 3, 1887, c. 397, § 5 (24 St. 636). See § 313.

**Recording,  
etc., certifi-  
cates of  
marriage**

SECTION 319. Every ceremony of marriage, or in the nature of a marriage ceremony of any kind, whether either or both or more of the parties to such ceremony be lawfully competent to be the subjects of such marriage or ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony, the full name of each of the parties concerned, and the full name of every officer, priest, and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest, or other person solemnizing such marriage or ceremony filed in the office of the probate court, or, if there be none, in the office of the court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded, and be at all times subject to inspection as other public records. Such certificate, or the record thereof, or a duly certified copy of such record, shall be *prima facie* evidence of the facts required by this section to be stated therein in any proceeding, civil or criminal, in which the matter shall be drawn in question. But nothing in this section shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence other-

wise legally admissible for that purpose. Whoever shall willfully violate any provision of this section shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both. The provisions of this section shall apply only within the Territories of the United States.

**Recording,  
etc., certifi-  
cates of  
marriage**

This section is the same as the Act of March 3, 1887, c. 397, §§ 9 and 10 (24 St. 636), except that there is a slight change in phraseology.

SECTION 320. Whoever shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other animal, for money or for other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged, shall be imprisoned not more than five years. The provisions of this section shall apply only within the Territories of the United States and the District of Columbia.

**Prize fights,  
bull fights,  
etc.**

This section is the same as the Act of Feb. 7, 1896, c. 12, § 1 (29 St. 5), except that there is a slight change in the punishment and in the phraseology.

SECTION 321. 'By the term "pugilistic encounter," as used in the section last preceding, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged.

**Definition  
of pugilistic  
encounter**

This section is the same as the Act of Feb. 7, 1896, c. 12, § 2 (29 St. 5).

SECTION 322. Whoever shall willfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, with the intent to commit murder, or robbery, shall be fined not more than five thousand dollars, or imprisoned not more than twenty years, or both. Whoever shall willfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, with intent to commit any unlawful violence upon or against any passenger on said train, or car, or upon or against any engi-

**Train rob-  
beries, etc.**

**Train robbery, etc.**

neer, conductor, fireman, brakeman, or any officer or employee connected with said locomotive, train, or car, or upon or against any express messenger or mail agent on said train or in any car thereof, or to commit any crime or offense against any person or property thereon, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. Whoever shall counsel, aid, abet, or assist in the perpetration of any of the offenses set forth in this section shall be deemed to be a principal therein. Upon the trial of any person charged with any offense set forth in this section, it shall not be necessary to set forth or prove the particular person against whom it was intended to commit the offense, or that it was intended to commit such offense against any particular person.

This section is taken from the Act of July 1, 1902, c. 1376, §§ 1-3 (32 St. 727). The words "within any Territory of the United States, or any place subject to the exclusive jurisdiction or control thereof," are omitted; and there is a change in the punishment.

## CHAPTER FOURTEEN

## GENERAL AND SPECIAL PROVISIONS

| SECTION   | SECTION   |
|---|---|
| 323. Punishment of death by hanging                                       | 332. Who are principals   |
| 324. No conviction to work corruption of blood or forfeiture of estate    | 333. Punishment of accessories  |
| 325. Whipping and the pillory abolished                                   | 334. Accessories to robbery or piracy   |
| 326. Jurisdiction of State courts   | 335. Felonies and misdemeanors  |
| 327. Pardoning power  | 336. Murder and manslaughter; place where crime deemed to have been committed |
| 328. Indians committing certain crimes; how punished                      | 337. Construction of certain words  |
| 329. Crimes committed on Indian reservations in South Dakota              | 338. Omission of words "hard labor" not to deprive court of power to impose   |
| 330. Qualified verdicts in certain cases                                  | 339. Arrangement and classification of sections                               |
| 331. Body of executed offender may be delivered to surgeon for dissection | 340. Jurisdiction of circuit and district courts                              |

SECTION 323. The manner of inflicting the punishment of death shall be by hanging.

Death  
penalty by  
hanging

This section is the same as U. S. Rev. Sts. § 5325. This does not prevent an organized Territory from providing a different form of death penalty. *Wilkerson v. Utah*, 99 U. S. 130, 25 L. ed. 345.

SECTION 324. No conviction or judgment shall work corruption of blood or any forfeiture of estate.

Corruption  
of blood and  
forfeiture of  
estate  
excluded

This section is the same as U. S. Rev. Sts. § 5326. *United States v. Coppersmith*, 4 F. R. 198, 201, 10 Rep. 517.

SECTION 325. The punishment of whipping and of standing in the pillory shall not be inflicted.

Whipping  
and pillory  
abolished

This section is the same as U. S. Rev. Sts. § 5327. *In re Birdsong*, 39 F. R. 599.

**Jurisdiction  
of State  
courts**

SECTION 326. Nothing in this Title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

This section is the same as U. S. Rev. Sts. § 5328.

United States *v.* Gibson, 47 F. R. 833; *Ex parte* Ballinger, 88 Id. 781, 5 Hughes, 387. The same act may be an offense against both State and United States. Cross *v.* North Carolina, 132 U. S. 131, 33 L. ed. 287; New York *v.* Eno, 155 Id. 89, 39 L. ed. 80; *In re* Eno, 54 F. R. 669; *In re* Loney, 134 U. S. 372, 33 L. ed. 949, 38 F. R. 101; Pettibone *v.* United States, 148 U. S. 197, 209, 37 L. ed. 419; Sexton *v.* California, 189 U. S. 319, 47 L. ed. 833; United States *v.* Lackey, 99 F. R. 952; People *v.* Welch, 141 N. Y. 266, 74 Hun, 474; Hoke *v.* People, 122 Ill. 511; *In re* Murphy, 5 Wyo. 297, 306. See also Fox *v.* Ohio, 5 How. 410. Congress may exclude the jurisdiction of the State courts from offenses within the power of Congress to punish, but in many cases it has not done so, — as in passing counterfeit money. *Ex parte* Geisler, 50 F. R. 411, 4 Woods, 381. Offenses against the national bank laws are punishable in the Federal courts exclusively. Cross *v.* North Carolina 132 U. S. 131, 33 L. ed. 287; New York *v.* Eno, 155 Id. 89, 39 L. ed. 80; *In re* Eno, 54 F. R. 669; *In re* Loney, 38 Id. 101, 134 U. S. 372, 33 L. ed. 949; *Ex parte* Houghton, 7 F. R. 657, 8 Id. 897, 24 Alb. L. J. 145, 2 Crim. L. Mag. 759. A Federal official cannot be prosecuted in the State courts for acts done in his official capacity. Ohio *v.* Thomas, 173 U. S. 276, 43 L. ed. 699, 87 F. R. 453; *In re* Waite, 81 Id. 359. He may raise the question on a writ of *habeas corpus*. Id. But a Federal official may be arrested by the State authorities while in the performance of his duties, provided the arrest is not made for the purpose of interfering with his duties and the act is not part of them. *In re* Miller, 42 F. R. 307. A pilot arrested by the State authorities for manslaughter, the death being caused by a collision of boats due to the pilot's negligence,

cannot raise the question of jurisdiction by *habeas corpus*, but must sue out a writ of error. *In re Welch*, 57 F. R. 576. As the punishment of perjury belongs peculiarly to the government in whose tribunals the proceeding is had, a State court has no jurisdiction of this offense when committed in an examination before a commissioner under the Bankruptcy Act, or in making an affidavit under Acts of Congress relating to public lands, or in testifying by deposition in the contested election of a member of Congress; but as to elections, the State courts appear to have concurrent power with those of the United States to punish fraudulent voting for representatives in Congress, as they clearly have in regard to votes for presidential electors. *In re Loney*, 134 U. S. 372, 33 L. ed. 949, 38 F. R. 101; *In re Green*, 134 U. S. 377, 33 L. ed. 951; *McPherson v. Blacker*, 146 Id. 1, 35, 36 L. ed. 869. While the jurisdiction of the Federal courts does not embrace common-law offences, these courts resort to the common law for the definition of terms by which offenses are designated. *United States v. Eaton*, 144 U. S. 677, 36 L. ed. 591; *Pettibone v. United States*, 148 Id. 197, 203, 37 L. ed. 419; 20 A. G. Op. 590.

Jurisdiction of State courts

SECTION 327. Whenever, by the judgment of any court or judicial officer of the United States, in any criminal proceeding, any person is sentenced to two kinds of punishment, the one pecuniary and the other corporal, the President shall have full discretionary power to pardon or remit, in whole or in part, either one of the two kinds, without, in any manner, impairing the legal validity of the other kind, or of any portion of either kind, not pardoned or remitted.

Pardoning power

This section is the same as U. S. Rev. Sts. § 5330.

If one, convicted of crime and sentenced to pay a fine, is granted a full and unconditional pardon, after payment of the fine, but before the money has been covered into the Treasury, the fine should be restored to him though the pardon does not express words of restitution. 16 A. G. Op. 1. If the money has reached the Treasury, and rights in favor of third

**Pardoning  
power**

persons have attached, the person pardoned cannot claim a restitution of the fine. 8 A. G. Op. 281; 10 Id. 1; *Knote v. United States*, 95 U. S. 149, 24 L. ed. 442. The fine may be remitted after the death of the offender. 11 A. G. Op. 35. See also 14 Id. 124. Without congressional action the President has constitutional power to issue a general pardon or amnesty to classes of criminals. 20 A. G. Op. 330, 668. As to re-enfranchisement by pardon see 9 A. G. Op. 478. The President may pardon one imprisoned for contempt of court. 19 A. G. Op. 476. But, in the absence of statute, he has no authority to remove a convict from one prison to another. Id. 377.

**Indians  
committing  
certain  
crimes**

SECTION 328. All Indians committing against the person or property of another Indian or other person any of the following crimes, namely—murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, and larceny, within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases. And all such Indians committing any of the above-named crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and be subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States: *Provided*, That any Indian who shall commit the offense of rape upon any female Indian within the limits of any Indian reservation shall be imprisoned at the discretion of the court.

This section is founded on the Acts of March 3, 1885, c. 341, § 9 (23 St. 385), and of Jan. 15, 1897, c. 29, § 5 (29 St. 487). See § 1 of the last-named Act. The words "assault with a dangerous weapon," the word "named" before

"crimes" in the second sentence, and the words "upon any female Indian" in the last sentence, are inserted.

Indians  
committing  
certain  
crimes

See § 329. Gon-Shay-Ee, petitioner, 130 U. S. 343, 32 L. ed. 973; *In re Wilson*, 140 Id. 575, 35 L. ed. 513; *Famous Smith v. United States*, 151 Id. 50, 38 L. ed. 67; *Ward v. Race Horse*, 163 Id. 504, 41 L. ed. 244; *United States v. Berry*, 4 F. R. 779; *United States v. Martin*, 14 Id. 817; *In re Sah Quah*, 31 Id. 327, 331; *United States v. Barnaby*, 51 Id. 20; *Good Shot v. United States*, 104 Id. 257; *United States v. Monte*, 3 New Mex. 173; 17 A. G. Op. 567. This section is constitutional. *United States v. Kagama*, 118 U. S. 375, 30 L. ed. 228; *United States v. Thomas*, 151 Id. 577, 38 L. ed. 276, 47 F. R. 488. It applies only to Indians. *Westmoreland v. United States*, 155 U. S. 545, 39 L. ed. 255.

"Indians." The legitimate son of a negro father by an Indian mother is not an Indian. *United States v. Ward*, 42 F. R. 320. But see *United States v. Sanders*, Hempst. 483, 27 Fed. Cas. 950, holding that the child follows the mother. Indians holding allotted lands in severalty under the general Act of 1887 in a reservation within a State are not subject to this section but to the State courts. *Matter of Heff*, 197 U. S. 488, 49 L. ed. 848; *United States v. Kiya*, 126 F. R. 879; *State v. Williams*, 13 Wash. 335; *contra*, *State v. Columbia George*, 39 Or. 127. The conviction hereunder of an Indian for an offence committed on an Indian reservation within a State is a conclusive adjudication that he is a nonallotted Indian. *Ex parte Savage*, 158 F. R. 205. By the Act of May 8, 1906, c. 2348, 34 Stat. 182, the Act of 1887 was amended giving the United States exclusive jurisdiction over allotted Indians. This section applies to all Indians except those made by Congress subject to State laws. *United States v. Celestine*, 215 U. S. 278. The offenses here enumerated are the only ones for which tribal Indians are punishable in the Federal courts under the present laws. *In re Mayfield*, 141 U. S. 107, 35 L. ed. 635; *United States v. King*, 81 F. R. 625; *Ex parte*



**Indians committing certain crimes**

Hart, 157 Id. 130. But see *United States v. Clapox*, 35 Id. 575. The State courts have authority to try Indians for offenses committed off the reservations: *United States v. Yellow Sun*, 1 Dillon, 271; *United States v. Ward*, Woolw. 17, McCahon (Kans.) 199; *Pablo v. People*, 23 Col. 134; and for offenses committed on the reservations by persons not tribal Indians: *United States v. McBratney*, 104 U. S. 621, 26 L. ed. 869; *Draper v. United States*, 164 Id. 240, 41 L. ed. 419; *State v. Campbell*, 53 Minn. 354; but not for offenses committed on reservations by tribal Indians, *In re Blackbird*, 109 F. R. 139; *State v. Campbell*, 53 Minn. 354.

**Crimes committed on Indian reservations in So. Dakota**

SECTION 329. The circuit and district courts of the United States for the district of South Dakota shall have jurisdiction to hear, try, and determine all actions and proceedings in which any person shall be charged with the crime of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, or larceny, committed within the limits of any Indian reservation in the State of South Dakota. Any person convicted of murder, manslaughter, rape, arson, or burglary, committed within the limits of any such reservation, shall be subject to the same punishment as is imposed upon persons committing said crimes within the exclusive jurisdiction of the United States: *Provided*, That any Indian who shall commit the crime of rape upon any female Indian within any such reservation shall be imprisoned at the discretion of the court. Any person convicted of the crime of assault with intent to kill, assault with a dangerous weapon, or larceny, committed within the limits of any such reservation, shall be subject to the same punishment as is provided in cases of other persons convicted of any of said crimes under the laws of the State of South Dakota. This section is passed in pursuance of the cession of jurisdiction contained in chapter one hundred and six, Laws of South Dakota, nineteen hundred and one.

This section is taken from the Act of Feb. 2, 1903, c. 351, §§ 1-4 (32 St. 793). There are a few changes in phraseology.

See § 328. *United States v. Ewing*, 47 F. R. 809. This is constitutional. *Hollister v. United States*, 145 F. R. 773.

**SECTION 330.** In all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto "without capital punishment"; and whenever the jury shall return a verdict qualified as aforesaid, the person convicted shall be sentenced to imprisonment for life.

**Qualified verdicts in certain cases**

This section is the same as the Act of Jan. 15, 1897, c. 29, § 1 (29 St. 487), except that the words "in the first degree" are added.

See §§ 273 and 278. The right here granted is entirely within the discretion of the jury. *Winston v. United States*, 172 U. S. 303, 43 L. ed. 456, 13 App. D. C. 157; *United States v. Williams*, 103 F. R. 938; *United States v. Lewis*, 111 Id. 630, 636; *Smith v. United States*, 13 App. D. C. 155. This does not make the crimes anything less than a "capital offense." *Fitzpatrick v. United States*, 178 U. S. 304, 44 L. ed. 1078; *Good Shot v. United States*, 104 F. R. 257. This section applies to the District of Columbia. *Strather v. United States*, 13 App. D. C. 132; *Fearson v. United States*, 10 Id. 536; *Horton v. United States*, 15 Id. 310; *Small v. United States*, 16 Id. 501.

**SECTION 331.** The court before which any person is convicted of murder in the first degree, or rape, may, in its discretion, add to the judgment of death, that the body of the offender be delivered to a surgeon for dissection; and the marshal who executes such judgment shall deliver the body, after execution, to such surgeon as the court may direct; and such surgeon, or some person appointed by him, shall receive and take away the body at the time of execution.

**Delivery of body of executed offender for dissection**

This section is the same as U. S. Rev. Sts. § 5340, except that the words "in the first degree or rape" are inserted.

**SECTION 332.** Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

**Principals defined**

This section is partly taken from U. S. Rev. Sts. §§ 5323 and 5427, but is enlarged so as to be of general application.

**Principals  
defined**

United States *v.* Ross, 1 Gall. 624; United States *v.* Jones, 3 Wash. C. C. 209; United States *v.* Ramsay, Hempst. 481; United States *v.* Terrel, Id. 411; Opinion of Judge Wells, Id. 413, 1 West. L. J. 246; United States *v.* Douglass, 2 Blatch. 207; Levin *v.* United States, 128 F. R. 826; Dolan *v.* United States, 133 Id. 440.

**Punishment  
of access-  
ories**

SECTION 333. Whoever, except as otherwise expressly provided by law, being an accessory after the fact to the commission of any offense defined in any law of the United States, shall be imprisoned not exceeding one-half the longest term of imprisonment, or fined not exceeding one-half the largest fine prescribed for the punishment of the principal, or both, if the principal is punishable by both fine and imprisonment; or if the principal is punishable by death, then an accessory shall be imprisoned not more than ten years.

This section is partly taken from U. S. Rev. Sts. §§ 5533, 5534, 5535, but is enlarged so as to be of general application.

Opinion of Judge Wells, Hempst. 413, note, 1 West. L. J. 246, 1 Fed. Cas. 999. An accessory may be tried and convicted if the principal cannot be found, but where the principal has been tried and acquitted the accessory will be released on motion. United States *v.* Crane, 4 McLean, 317. See also United States *v.* New, 27 Fed. Cas. 90.

**Accessories  
to robbery  
or piracy**

SECTION 334. Whoever, without lawful authority, receives or takes into custody any vessel, goods, or other property, feloniously taken by any robber or pirate against the laws of the United States, knowing the same to have been feloniously taken, and whoever, knowing that such pirate or robber has done or committed any such piracy or robbery, on the land or at sea, receives, entertains, or conceals any such pirate or robber, is an accessory after the fact to such robbery or piracy, and shall be imprisoned not more than ten years.

This section is taken from U. S. Rev. Sts. §§ 5324 and 5533. The words "without lawful authority" are added, and there is a change in punishment.

Opinion of Judge Wells, Hempst. 413, note, 1 West. L. J. 246, 1 Fed. Cas. 999. **Accessories to robbery or piracy**

SECTION 335. All offenses which may be punished by death, or imprisonment for a term exceeding one year, shall be deemed felonies. All other offenses shall be deemed misdemeanors. **Felonies and misdemeanors**

This section is new.

SECTION 336. In all cases of murder or manslaughter, the crime shall be deemed to have been committed at the place where the injury was inflicted, or the poison administered, or other means employed which caused the death, without regard to the place where the death occurs. **Place of committal of murder or manslaughter determined**

This section is founded on U. S. Rev. Sts. §§ 5339, 5341, but is considerably changed.

See §§ 272-274. It was formerly doubtful whether the crime was committed where the defendant did his act unless the deceased died there. See *Ball v. United States*, 140 U. S. 118, 135, 35 L. ed. 377; *United States v. Armstrong*, 2 Curtis, 446; *United States v. M'Gill*, 4 Dall. 426, 1 L. ed. 894; *United States v. Guiteau*, 1 Mackey, 498; *United States v. Hewecker*, 79 F. R. 59; *State v. Kelly*, 76 Me. 331; *Stout v. State*, 76 Md. 317, 327.

SECTION 337. Words used in this title in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" and the word "whoever" include a corporation as well as a natural person; writing includes printing and typewriting, and signature or subscription includes a mark when the person making the same intended it as such. The words "this title," wherever they occur herein, shall be construed to mean this Act. **Construction of designated words**

SECTION 338. The omission of the words "hard labor" from the provisions prescribing the punishment in the various sections of this Act, shall not be construed as depriving the court of the power to impose hard labor as a part of the punishment, in any case where such power now exists. **Effect of omitting hard labor**

**Arrange-  
ment and  
classifica-  
tion of  
sections**

SECTION 339. The arrangement and classification of the several sections of this title have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the chapters under which any particular section is placed.

**Jurisdio-  
tions of  
circuit and  
district  
courts**

SECTION 340. The crimes and offenses defined in this Title shall be cognizable in the circuit and district courts of the United States, as prescribed in sections five hundred and sixty-three and six hundred and twenty-nine of the Revised Statutes.

Sections 337-340 are all new.

# CHAPTER FIFTEEN

## REPEALING PROVISIONS

| SECTION   | SECTION                               |
|---|---------------------------------------|
| 341. Sections, acts, and parts of acts repealed | 343. Prosecutions and punishments     |
| 342. Accrued rights, etc., not affected         | 344. Acts of limitation               |
|   | 345. Date this act shall be effective |

SECTION 341. The following sections of the Revised Statutes and Acts and parts of Acts are hereby repealed:

Sections four hundred and twelve, fifteen hundred and fifty-three, sixteen hundred and sixty-eight; sections seventeen hundred and eighty to seventeen hundred and eighty-three, both inclusive; sections seventeen hundred and eighty-five, seventeen hundred and eighty-seven, seventeen hundred and eighty-eight, seventeen hundred and eighty-nine, twenty-three hundred and seventy-three, twenty-four hundred and twelve, thirty-five hundred and eighty-three, thirty-seven hundred and eight, thirty-seven hundred and thirty-nine, thirty-seven hundred and forty, thirty-seven hundred and forty-two, thirty-eight hundred and thirty-two, thirty-eight hundred and fifty-one, thirty-eight hundred and sixty-nine, thirty-eight hundred and eighty-seven; sections thirty-eight hundred and ninety to thirty-eight hundred and ninety-four, both inclusive; section thirty-eight hundred and ninety-nine; sections thirty-nine hundred and twenty-two to thirty-nine hundred and twenty-five, both inclusive; sections thirty-nine hundred and forty-seven, thirty-nine hundred and fifty-four, thirty-nine hundred and seventy-seven, thirty-nine hundred and seventy-nine; sections thirty-nine hundred and eighty-one to thirty-nine hundred and eighty-six, both inclusive; sections thirty-nine hundred and eighty-eight, thirty-nine hundred and ninety-two, thirty-nine hundred and ninety-five, thirty-nine hundred and ninety-six, four thousand and thirteen, four thousand and sixteen, four thousand and thirty, four thousand and fifty-three, fifty-one hundred and eighty-eight, fifty-one hundred and eighty-nine; sections fifty-two hundred and eighty-one to fifty-two hundred and ninety-one,

Sections,  
acts, and  
parts of acts  
repealed

Sections,  
acts, and  
parts of acts  
repealed

both inclusive; sections fifty-three hundred and twenty-three to fifty-three hundred and ninety-five, both inclusive; sections fifty-three hundred and ninety-eight to fifty-four hundred and ten, both inclusive; sections fifty-four hundred and thirteen to fifty-four hundred and eighty-four, both inclusive; sections fifty-four hundred and eighty-seven to fifty-five hundred and ten, both inclusive; sections fifty-five hundred and sixteen, fifty-five hundred and eighteen, fifty-five hundred and nineteen; sections fifty-five hundred and twenty-four to fifty-five hundred and thirty-five, both inclusive; sections fifty-five hundred and fifty-one to fifty-five hundred and sixty-seven, both inclusive, of the Revised Statutes:

That part of section thirty-eight hundred and twenty-nine of the Revised Statutes which reads as follows: "And every person who, without authority from the Postmaster-General, sets up or professes to keep any office or place of business bearing the sign, name, or title of post-office, shall, for every such offense, be liable to a penalty of not more than five hundred dollars";

That part of section thirty-eight hundred and sixty-seven of the Revised Statutes which reads as follows: "And any person not connected with the letter-carrier branch of the postal service who shall wear the uniform which may be prescribed shall, for every such offense, be punishable by a fine of not more than one hundred dollars, or by imprisonment for not more than six months, or both";

That part of section four thousand and forty-six of the Revised Statutes which reads as follows: "Every postmaster, assistant, clerk, or other person employed in or connected with the business or operations of any money-order office who converts to his own use, in any way whatever, or loans, or deposits in any bank, except as authorized by this title, or exchanges for other funds, any portion of the public money-order funds, shall be deemed guilty of embezzlement; and any such person, as well as every other person advising or participating therein, shall, for every such offense, be imprisoned for not less than six months nor more than ten years, and be fined in a sum equal to the amount embezzled; and any failure to pay over or produce any money-order funds intrusted to such person shall be taken to be *prima facie* evidence of embezzlement; and upon the trial of any indictment against any person for such embezzlement, it shall be *prima facie* evidence of a balance against him to produce a transcript from the money-order account books of the Sixth Auditor. But nothing herein con-

tained shall be construed to prohibit any postmaster depositing, under the direction of the Postmaster-General, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as postmaster, any money-order or other funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers, or otherwise, when instructed or required to do so by the Postmaster-General, for the purpose of remitting surplus money-order funds from one post-office to another, to be used in payment of money orders."

Sections,  
acts, and  
parts of acts  
repealed

"An Act to protect lines of telegraph constructed or used by the United States from malicious injury and obstruction," approved June twenty-third, eighteen hundred and seventy-four;

"An Act to protect persons of foreign birth against forcible constraint or involuntary servitude," approved June twenty-third, eighteen hundred and seventy-four;

That part of "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," approved June twenty-third, eighteen hundred and seventy-four, which reads as follows: "That any postmaster who shall affix his signature to the approval of any bond of a bidder or to the certificate of sufficiency of sureties in any contract before the said bond or contract is signed by the bidder or contractor and his sureties, or shall knowingly, or without the exercise of due diligence, approve any bond of a bidder with insufficient sureties, or shall knowingly make any false or fraudulent certificate, shall be forthwith dismissed from office and be thereafter disqualified from holding the office of postmaster, and shall also be deemed guilty of a misdemeanor, and on conviction thereof be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or both";

Sections one, two, and three of "An Act to protect ornamental and other trees on Government reservations and on lands purchased by the United States, and for other purposes," approved March third, eighteen hundred and seventy-five;

"An Act to punish certain larcenies and the receivers of stolen goods," approved March third, eighteen hundred and seventy-five;

"An Act to amend section fifty-four hundred and fifty-seven of the Revised Statutes of the United States, relating to



Sections,  
acts, and  
parts of acts  
repealed

counterfeiting," approved January sixteenth, eighteen hundred and seventy-seven;

That part of section five of "An Act establishing post-roads, and for other purposes," approved March third, eighteen hundred and seventy-seven, which reads as follows: "And if any person shall make use of any such official envelope to avoid the payment of postage on his private letter, package, or other matter in the mail, the person so offending shall be deemed guilty of a misdemeanor and subject to a fine of three hundred dollars, to be prosecuted in any court of competent jurisdiction";

That part of section one of "An Act making appropriations for the service of the Post-Office Department for the year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes," approved June seventeenth, eighteen hundred and seventy-eight, which reads as follows: "And any postmaster who shall make a false return to the auditor, for the purpose of fraudulently increasing his compensation under the provisions of this or any other Act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not less than fifty nor more than five hundred dollars, or imprisoned for a term not exceeding one year, or punished by both such fine and imprisonment, in the discretion of the court; and no postmaster of any class, or other person connected with the postal service, intrusted with the sale or custody of postage stamps, stamped envelopes, or postal cards, shall use or dispose of them in the payment of debts or in the purchase of merchandise or other salable articles, or pledge or hypothecate the same, or sell or dispose of them except for cash, or sell or dispose of postage stamps or postal cards for any larger or less sum than the values indicated on their faces, or sell or dispose of stamped envelopes for a larger or less sum than is charged therefor by the Post-Office Department for like quantities, or sell or dispose of postage stamps, stamped envelopes, or postal cards otherwise than as provided by law and the regulations of the Post-Office Department; and any postmaster or other person connected with the postal service who shall violate any of these provisions shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars, or imprisoned for a term not exceeding one year";

"An Act to amend section fifty-four hundred and ninety-seven of the Revised Statutes, relating to embezzlement by

officers of the United States," approved February third, eighteen hundred and seventy-nine;

That part of section one of "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes," approved March third, eighteen hundred and seventy-nine, which reads as follows: "That nothing contained in section thirty-nine hundred and eighty-two of the Revised Statutes shall be construed as prohibiting any person from receiving and delivering to the nearest post-office or postal car mail matter properly stamped." Also sections thirteen, twenty-three, twenty-seven, and twenty-eight of said Act;

"An Act to amend section fifty-four hundred and forty of the Revised Statutes," approved May seventeenth, eighteen hundred and seventy-nine;

Sections one, three, and four of "An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two;

Sections eleven, twelve, thirteen, fourteen, and fifteen of "An Act to regulate and improve the civil service of the United States," approved January sixteenth, eighteen hundred and eighty-three;

"An Act making it a felony for a person to falsely and fraudulently assume or pretend to be an officer or employee acting under authority of the United States or any department or officer thereof, and prescribing a penalty therefor," approved April eighteenth, eighteen hundred and eighty-four;

"An Act to prevent and punish the counterfeiting within the United States of notes, bonds, or other securities of foreign governments," approved May sixteenth, eighteen hundred and eighty-four;

Section nine of "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes," approved March third, eighteen hundred and eighty-five;

Section two of "An Act to amend the Act entitled 'An Act to modify the money-order system, and for other purposes,' approved March third, eighteen hundred and eighty-three," approved January third, eighteen hundred and eighty-seven;

Sections,  
acts, and  
parts of acts  
repealed

**Sections,  
acts, and  
parts of acts  
repealed**

Sections three, four, five, nine, and ten of "An Act to amend an Act entitled 'An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes,' approved March twenty-second, eighteen hundred and eighty-two," approved March third, eighteen hundred and eighty-seven;

Section two of "An Act relating to permissible marks, printing or writing, upon second, third, and fourth class matter, and to amend the twenty-second and twenty-third sections of an Act entitled 'An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes,' " approved January twentieth, eighteen hundred and eighty-eight;

"An Act to amend section fifty-three hundred and eighty-eight of the Revised Statutes of the United States in relation to timber depredations," approved June fourth, eighteen hundred and eighty-eight;

"An Act relating to postal crimes, and amendatory of the statutes therein mentioned," approved June eighteenth, eighteen hundred and eighty-eight;

"An Act amendatory of 'An Act relating to postal crimes and amendatory of the statutes therein mentioned,' approved June eighteenth, eighteen hundred and eighty-eight, and for other purposes," approved September twenty-sixth, eighteen hundred and eighty-eight;

"An Act to punish, as a felony, the carnal and unlawful knowing of any female under the age of sixteen years," approved February ninth, eighteen hundred and eighty-nine;

Sections one and two of "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails," approved March second, eighteen hundred and eighty-nine;

Section one of "An Act to amend certain sections of the Revised Statutes relating to lotteries, and for other purposes," approved September nineteenth, eighteen hundred and ninety;

"An Act further to prevent counterfeiting or manufacture of dies, tools, or other implements used in counterfeiting, and providing penalties therefor, and providing for the issue of search warrants in certain cases," approved February tenth, eighteen hundred and ninety-one;

"An Act to amend sections fifty-three hundred and sixty-five and fifty-three hundred and sixty-six of the Revised

Statutes relating to barratry on the high seas," approved August sixth, eighteen hundred and ninety-four;

Sections one and two of "An Act for the suppression of lottery traffic through national and interstate commerce and the postal service, subject to the jurisdiction and laws of the United States," approved March second, eighteen hundred and ninety-five;

Sections,  
acts, and  
parts of acts  
repealed

"An Act to prohibit prize fighting and pugilism and fights between men and animals, and to provide penalties therefor in the Territories and the District of Columbia," approved February seventh, eighteen hundred and ninety-six;

That part of "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, eighteen hundred and ninety-five," approved August eighth, eighteen hundred and ninety-four, and that part of "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, eighteen hundred and ninety-six," approved March second, eighteen hundred and ninety-five, and that part of "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven," approved April twenty-fifth, eighteen hundred and ninety-six, which reads as follows: "Any person who shall knowingly issue or publish any weather forecasts or warnings of weather conditions falsely representing such forecasts or warnings to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the government service, shall be deemed guilty of a misdemeanor, and, on conviction thereof, for each offense be fined in a sum not exceeding five hundred dollars, or imprisoned not to exceed ninety days, or be both fined and imprisoned, in the discretion of the court";

That part of "An Act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes," approved June tenth, eighteen hundred and ninety-six, which reads as follows: *Provided further*, That hereafter it shall be unlawful for any person to destroy, deface, change, or remove to another place and section corner, quarter-section corner, or meander post on any Government line of survey, or to cut down any witness tree or any tree blazed to mark the line of a Government survey, or to deface, change, or remove any monument or bench mark

Sections,  
acts, and  
parts of acts  
repealed

of any Government survey. That any person who shall offend against any of the provisions of this paragraph shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court, shall be fined not exceeding two hundred and fifty dollars or be imprisoned not more than one hundred days. All the fines accruing under this paragraph shall be paid into the Treasury, and the informer in each case of conviction shall be paid the sum of twenty-five dollars";

"An Act to reduce the cases in which the penalty of death may be inflicted," approved January fifteenth, eighteen hundred and ninety-seven;

"An Act to prevent the carrying of obscene literature and articles designed for indecent and immoral use from one State or Territory into another State or Territory," approved February eighth, eighteen hundred and ninety-seven;

"An Act to prevent forest fires on the public domain," approved February twenty-fourth, eighteen hundred and ninety-seven;

"An Act to prevent the purchasing of or speculating in claims against the Federal Government by United States officers," approved February twenty-fifth, eighteen hundred and ninety-seven;

"An Act to amend section fifty-four hundred and fifty-nine of the Revised Statutes, prescribing the punishment for mutilating United States coins, and for uttering or passing or attempting to utter or pass such mutilated coins," approved March third, eighteen hundred and ninety-seven;

Section eighteen of "An Act to amend the laws relating to navigation," approved March third, eighteen hundred and ninety-seven;

That part of section one of "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirteenth, eighteen hundred and ninety-nine," approved June thirteenth, eighteen hundred and ninety-eight, which reads as follows: "*Provided*, That any person or persons who shall place or cause to be placed any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mails with intent to cause an increase in the compensation of the railroad mail carrier over whose route such mail matter may pass, shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined not less than five hundred dollars nor more than twenty thousand dollars, and shall be imprisoned at hard labor not less than thirty days nor more than five years";

Section seventeen of "An Act to provide revenue for the Government, and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven;

Sections,  
acts, and  
parts of acts  
repealed

Section three of an Act entitled "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved March third, nineteen hundred and three;

"An Act to protect the harbor defenses and fortifications constructed or used by the United States from malicious injury, and for other purposes," approved July seventh, eighteen hundred and ninety-eight;

"An Act to amend an Act entitled 'An Act to prevent forest fires on the public domain,' approved February twenty-fourth, eighteen hundred and ninety-seven," approved May fifth nineteen hundred;

Sections two, three, and four of "An Act to enlarge the powers of the Department of Agriculture, prohibit the transportation by interstate commerce of game killed in violation of local laws, and for other purposes," approved May twenty-fifth, nineteen hundred;

"An Act to prevent the sale of firearms, opium, and intoxicating liquors in certain islands of the Pacific," approved February fourteenth, nineteen hundred and two;

"An Act for the suppression of train robbery in the Territories of the United States and elsewhere, and for other purposes," approved July first, nineteen hundred and two;

"An Act conferring jurisdiction upon the circuit and district courts for the district of South Dakota in certain cases, and for other purposes," approved February second, nineteen hundred and three;

"An Act to amend section three of the 'Act further to prevent counterfeiting or manufacturing of dies, tools, or other implements used in manufacturing,' and so forth, approved February tenth, eighteen hundred and ninety-one," approved March third, nineteen hundred and three;

"An Act for the protection of the Bull Run Forest Reserve and the sources of the water supply of the city of Portland, State of Oregon," approved April twenty-eighth, nineteen hundred and four;

"An Act to amend the Act of February eighth, eighteen hundred and ninety-seven, entitled 'An Act to prevent the carrying of obscene literature and articles designed for in-

**Sections,  
acts, and  
parts of acts  
repealed**

decent and immoral use from one State or Territory into another State or Territory,' so as to prevent the importation and exportation of the same," approved February eighth, nineteen hundred and five;

"An Act to amend section thirteen of chapter three hundred and ninety-four of the Supplement to the Revised Statutes of the United States," approved March second, nineteen hundred and five;

Section five of "An Act to amend sections forty-four hundred and seventeen, forty-four hundred and fifty-three, forty-four hundred and eighty-eight, and forty-four hundred and ninety-nine of the Revised Statutes relating to misconduct by officers or owners of vessels," approved March third, nineteen hundred and five;

"An Act to punish the cutting, chipping, or boxing of trees on the public lands," approved June fourth, nineteen hundred and six.

Sections sixteen, seventeen, and nineteen of "An Act to establish a bureau of immigration and naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States," approved June twenty-ninth, nineteen hundred and six.

An Act entitled "An Act to prohibit corporations from making money contributions in connection with political elections," approved January twenty-sixth, nineteen hundred and seven.

An Act entitled "An Act to amend sections one, two, and three of an Act entitled 'An Act to prohibit shanghaiing in the United States,' approved June twenty-eighth, nineteen hundred and six," approved March second, nineteen hundred and seven.

An Act entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved May thirtieth, nineteen hundred and eight.

An Act entitled "An Act to amend section fifty-four hundred and thirty-eight of the Revised Statutes," approved May thirtieth, nineteen hundred and eight.

Also all other sections and parts of sections of the Revised Statutes and Acts and parts of Acts of Congress, in so far as they are embraced within and superseded by this Act, are hereby repealed; the remaining portions thereof to be and remain in force with the same effect and to the same extent as if this Act had not been passed.

SECTION 342. The repeal of existing laws or modifications thereof embraced in this title shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause prior to said repeal or modifications, but all liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made.

Sections,  
acts, and  
parts of acts  
repealed

SECTION 343. All offenses committed, and all penalties, forfeitures, or liabilities incurred prior to the taking effect hereof, under any law embraced in, or changed, modified, or repealed by this title, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed.

SECTION 344. All acts of limitation, whether applicable to civil causes and proceedings, or for the recovery of penalties or forfeitures, embraced in, modified, changed, or repealed by this title, shall not be affected thereby; and all suits or proceedings for causes arising or acts done or committed prior to the taking effect hereof may be commenced and prosecuted within the same time and with the same effect as if said repeal had not been made.

SECTION 345. This Act shall take effect and be in force on and after the first day of January, nineteen hundred and ten.

Sections 341-345 are all new.

Approved, March 4, 1909.



# TABLE OF REPEALED STATUTES WITH SUBSTITUTED SECTIONS OF CODE

THE following table gives the sections of the Revised Statutes and the Acts and parts of Acts repealed by section 341 and also the sections of the Code substituted therefor:

| R. S., sec. | Code, sec. | R. S., sec. | Code, sec. | R. S., sec. | Code, sec. |
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| 1553        | 42         | 3977        | 200        | 5333        | 3          |
| 1668        | 43         | 3979        | 188        | 5334        | 4          |
| 1780        | 101        | 3981-3986   | 180-185    | 5335        | 5          |
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| 1782        | 113        | 3992        | 186        | 5337        | 7          |
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| 1789        | 103        | 4030        | 210        | 5341        | 274, 336   |
| 2373        | 59         | 4046(pt.)   | 225        | 5342        | 277        |
| 2412        | 58         | 4053        | 225        | 5343        | 275        |
| 3583        | 178        | 5188        | 175        | 5344        | 282        |
| 3708        | 177        | 5189        | 176        | 5345        | 278        |
| 3739        | 114        | 5281        | 9          | 5346        | 276        |
| 3740        | 116        | 5282        | 10         | 5347        | 291        |
| 3742        | 115        | 5283        | 11         | 5348        | 283        |
| 3829(pt.)   | 179        | 5284        | 303        | 5349        | 280        |
| 3832        | 230        | 5285        | 12         | 5350        | 281        |
| 3851        | 214        | 5286        | 13         | 5351        | 281        |
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| 3891        | 195        | 5291        | 18         | 5356        | 287        |
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| 3893        | 211        | 5324        | 334        | 5358        | 297        |
| 3894        | 213        | 5325        | 323        | 5359        | 292        |
| 3899        | 207        | 5326        | 324        | 5360        | 293        |
| 3922        | 205        | 5327        | 325        | 5361        | 298        |
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TABLE OF REPEALED STATUTES

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| R. S., sec. | Code, sec. | R. S., sec. | Code, sec. | R. S., sec. | Code, sec. |
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| 5366        | 301        | 5413        | 147        | 5456        | 46         |
| 5367        | 301        | 5414        | 148        | 5457        | 163        |
| 5368        | 290        | 5415        | 149        | 5458        | 164        |
| 5369        | 294        | 5416        | 27         | 5459        | 165        |
| 5370        | 284        | 5417        | 63         | 5460        | 166        |
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| 5377        | 248        | 5424        | 76         | 5467        | 195        |
| 5378        | 249        | 5425        | 77         | 5468        | ...        |
| 5379        | 250        | 5426        | 78         | 5469        | 194        |
| 5380        | 251        | 5427        | 332        | 5470        | 194        |
| 5381        | 252        | 5428        | 79         | 5471        | 196        |
| 5382        | 252        | 5429        | 81         | 5472        | 197        |
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| 5384        | 307        | 5431        | 151        | 5474        | 199        |
| 5385        | 285        | 5432        | 152        | 5475        | 190        |
| 5386        | 286        | 5433        | 153        | 5476        | 189        |
| 5387        |            | 5434        | 154        | 5477        | 191        |
| 5388        | 50         | 5435        | 33         | 5478        | 192        |
| 5389        | 312        | 5436        | 34         | 5479        | 28         |
| 5390        | 146        | 5437        | 174        | 5480        | 215        |
| 5391        | 289        | 5438        | 35         | 5481        | 85         |
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| 5400        | 142        | 5445        | 69         | 5490        | 89         |
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| 5402        | 144        | 5447        | 65         | 5492        | 91         |
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## TABLE OF REPEALED STATUTES

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| 5502        | 110, 117   | 5526        | 269        | 5555        | 258        |
| 5503        | 98         | 5527        | 270        | 5556        | 259        |
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## APPENDIX

CONTAINING A REFERENCE TO ALL LAWS OF A GENERAL NATURE, PERMANENT IN CHARACTER, IN FORCE DECEMBER 1, 1908, HAVING PENAL PROVISIONS NOT PROPERLY SEPARABLE FROM THE ADMINISTRATIVE PROVISIONS; NOT CONTAINED IN THE CRIMINAL CODE, BUT EMBRACED IN THE GENERAL REVISION OF THE LAWS OF THE UNITED STATES.

[It is to be noted that Acts of Congress in force after December 1, 1908, are not considered in the following notes.]

### TITLE II

#### THE CONGRESS

*Chapter Six. — The Library of Congress.*

Stealing or injuring books of Library of Congress . . . . . 19 June, 1878; 20 Stat. 171.

*Chapter Seven. — Congressional investigations.*

Witness refusing to testify in Congressional inquiry . . . . . R. S., s. 102.

Though the reference here is to any matter under inquiry, the word "any" here refers to any matters within the jurisdiction of the two Houses of Congress, before them for consideration and proper for their action; to questions pertinent thereto, and to facts or papers bearing thereon; and so construed, these sections are within the constitutional power of Congress to enact. Sections 102 and 103 are not inseparably connected. *In re Chapman*, 166 U. S. 661, 666, 667, 41 L. ed. 1154; *People v. Keeler*, 99 N. Y. 479. As to the power of either House of Congress to punish for contempt, see *Kilbourn v. Thompson*, 103 U. S. 168, 26 L. ed. 377; *Anderson v. Dunn*, 6 Wheat. 204, 5 L. ed. 243; *Stewart v. Blaine*, 1 McArthur, 453; *Lilley*

*v. United States*, 14 Ct. Cl. 539; *United States v. New Bedford Bridge*, 1 Wood. & M. 440, 27 Fed. Cas. 91. Provisions so sweeping as §§ 102, 103, are constitutional, but will be judicially restrained within constitutional limits. *Chapman v. United States*, 5 App. D. C. 122, 8 Id. 302; *Lansburgh v. District of Columbia*, 11 Id. 512, 526.

*Chapter Eight. — Contested elections.*

Witness refusing to testify in contested  
election case . . . . . R. S., s. 116.

*New York v. Eno*, 155 U. S. 89, 97, 39 L. ed. 80; *Kilbourn v. Thompson*, 103 Id. 168, 26 L. ed. 377; *United States v. Cover*, 46 F. R. 284; *Lilley's Case*, 14 Ct. Cl. 539.

Failure to deliver up papers in contested  
election case . . . . . R. S., s. 123.

*In re Howell*, 119 F. R. 465.

## TITLE VI

### THE DEPARTMENT OF THE TREASURY

*Chapter One. — The Department.*

Officers in Treasury Department engaging  
in trade, etc. . . . . R. S., s. 243.

*Ex parte Curtis*, 106 U. S. 371, 372, 27 L. ed. 232; 25 A. G. Op. 98, 99, 103; 14 Id. 352; 4 Id. 555.

Clerks in Treasury Department trading  
in debts or funds of any State or United  
States . . . . . R. S., s. 244.

## TITLE XII

### THE DEPARTMENT OF COMMERCE AND LABOR

*Chapter Six. — The Bureau of Statistics.*

Person transporting commodities to for-  
eign countries failing to deliver manifest  
to collector of customs . . . . . 3 March, 1893; 27  
Stat. 689.

## TITLE XIV

## THE CIVIL SERVICE

*Chapter One. — Appointments, qualifications, duties, and payments of clerks and employees.*

Officers and employees violating duties  
concerning examination of applicants . 16 Jan., 1883, s. 7;  
22 Stat. 405.

## TITLE XV

## ESTIMATES AND APPROPRIATIONS

*Chapter Two. — Appropriations.*

Expenditures not to exceed appropriations; voluntary service, etc., or employment of unauthorized personal service prohibited . . . . . R. S., s. 3679.  
27 Feb., 1906; 34  
Stat. 49.

Chase *v.* United States, 155 U. S. 489, 503, 39 L. ed. 234;  
Bradley *v.* United States, 98 Id. 104, 25 L. ed. 105; Sanger *v.* United States, 40 Ct. Cl. 47; Semmes *v.* United States, 26 Id. 119; New York Central R. Co. *v.* United States, 21 Id. 468; Dougherty *v.* United States, 18 Id. 496; M'Collum *v.* United States, 17 Id. 92; Leavitt *v.* United States, 34 F. R. 623, 626; 21 A. G. Op. 244; 18 Id. 216, 569; 15 Id. 124, 151, 209, 271, 274.

## TITLE XVI

## THE JUDICIARY

*Chapter Three. — District Courts; Removal of causes.*

Clerk of State court refusing to give copy  
of record . . . . . 3 March, 1875, s. 7;  
18 Stat. 472.

Mayo *v.* Dockery, 127 N. C. 1; Wilkinson *v.* Delaware R. Co.,  
23 F. R. 562.

*Chapter Four. — District Court; Miscellaneous provisions.*

Receiver failing to properly manage property. . . . . 13 Aug., 1888, s. 2;  
25 Stat. 436.



*Chapter Eleven. — District attorneys, marshals, clerks, commissioners, and stenographers.*

Clerk of court refusing to make certificate . . . . . 22 Feb., 1875, s. 6;  
18 Stat. 334.

*Chapter Twelve. — Pay and allowances of court officers, jurors and witnesses.*

Marshal, attorney, or other officer accepting illegal fee. . . . . 28 May, 1896, s. 18;  
29 Stat. 183.

*Chapter Twenty. — Extradition.*

Opposing, etc., agent of United States, appointed to receive from foreign government person accused of crime within jurisdiction of United States. . . . . R. S., s. 5277.

Resisting agent of State or Territory appointed to receive person accused of crime in another State or Territory . . . R. S., s. 5279.

## TITLE XVII

### THE ARMY

*Chapter Eleven. — Articles of war.*

Civilian witness failing to obey subpoena of court martial . . . . . 2 March, 1901, s. 1;  
31 Stat. 950.

23 A. G. Op. 424.

## TITLE XXI

### DIPLOMATIC AND CONSULAR OFFICERS

*Chapter Two. — Consular officers.*

Consular officer accepting appointment from foreign country as administrator and failing to give bond or account for moneys . . . . . 30 June, 1902, s. 2;  
32 Stat. 547

Consular officer exacting excessive fees . . . R. S., s. 1716.

Consular officer making false oath in accounting for fees . . . . . R. S., s. 1728.

Consular officer neglecting duty toward seamen; corrupt conduct of . . . . . R. S., s. 1736.

Consular officer making false certificate of property . . . . . R. S., s. 1737.

*Chapter Three. — Provisions common to diplomatic and consular officers.*

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| Perjury before consular officer, or forging<br>seal or signature of such officer . . . . | R. S., s. 1750.                                    |
| Embezzlement by consular officer . . .   | R. S., s. 1734.<br>21 Dec., 1898; 30<br>Stat. 771. |

## TITLE XXII

## THE PUBLIC LANDS

*Chapter Three. — Registers and receivers.*

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| Witness refusing to appear or testify<br>before register or receiver of land office | 31 Jan., 1903, s. 3;<br>32 Stat. 790. |
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| Witness refusing to appear or testify before<br>officer taking deposition . . . . . | 31 Jan., 1903, s. 4;<br>32 Stat. 790. |
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*Chapter Five. — Homesteads.*

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| Making false affidavit before commanding<br>officer by person in military or naval<br>service . . . . . | R. S., s. 2293.                                   |
| Making false affidavit before U. S. com-<br>missioner . . . . .   | R. S., s. 2294.<br>4 March, 1904; 33<br>Stat. 59. |

United States *v.* Hearing, 26 F. R. 744; State *v.* Kirkpatrick, 32 Ark. 117.

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| Officer demanding excessive fees for en-<br>tries and for final proof . . . . . | R. S., s. 2294.<br>4 March, 1904; 33<br>Stat. 59. |
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*Chapter Six. — Mineral lands.*

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*Chapter Eight. — Timber and stone lands.*

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| Swearing falsely to application for timber<br>or stone land . . . . . | 3 June, 1878, s. 2;<br>20 Stat. 89. |
| Unlawfully cutting timber on public land                              | 3 June, 1878, s. 4;<br>20 Stat. 90. |

*United States v. Smith*, 11 Fed. Rep. 487; *United States v. Young*, Id. 493; *United States v. Williams*, 18 Id. 475; *United States v. Hacker*, 73 Id. 292; *Stubbs v. United States*, 111 Id. 366; *English v. United States*, 116 Id. 625, 107 Id. 867; *United States v. Blendauer*, 122 Id. 703; 16 A. G. Op. 189.

*Chapter Thirteen. — National forests.*

Rules concerning the use and occupancy of  
national forests and penalties for vio-  
lation . . . . . 4 June, 1897; 30  
Stat. 35.

*Dastervignes v. United States*, 122 F. R. 30; *Dent v. United States*, 8 Ariz. 138, 413; 22 A. G. Op. 266.

*Chapter Fifteen. — Unlawful inclosures.*

Inclosing public lands without title; ob-  
structing settlement of or transit over 25 Feb., 1885, s. 4;  
23 Stat. 322.  
10 March, 1908, s. 1;  
35 Stat. 40.

*Bircher v. United States*, 169 F. R. 589; *Potts v. United States*, 114 Id. 52; *United States v. Churchill*, 101 Id. 443; *Haynes v. United States*, Id. 817; *United States v. Cook*, 36 Id. 896.

*Chapter Nineteen. — Public lands in Oklahoma.*

Fraudulently settling on public lands . . 2 May, 1890, s. 24;  
26 Stat. 92.

*Chapter Twenty. — Public lands in Alaska.*

Collecting toll unlawfully in Alaska . . . 11 May, 1898, s. 6;  
30 Stat. 410.

## TITLE XXIII

### DUTIES UPON IMPORTS

Importing neat cattle . . . . . 24 July, 1897, ss. 25,  
26; 30 Stat. 210.

## TITLE XXIV

### COLLECTION OF DUTIES

*Chapter Two. — Qualifications, pay, and duties of officers.*

Officer failing to keep table of fees posted  
up . . . . . R. S., s. 2635.  
Bribery of customs officer or employee . . 10 June, 1890, s. 26;  
26 Stat. 141.

Officer demanding or receiving greater fee,  
etc., than allowed by law . . . . . R. S., s. 2636.  
10 June, 1890, s. 27;  
26 Stat. 141.

Hedden v. Iselin, 24 Blatch. 455, 460, 31 F. R. 266, 28 Id. 416.

Inspector, weigher, gauger, or measurer  
receiving fee, etc., other than allowed  
by law. . . . . R. S., s. 2637.  
False certification of shipment by inspector  
or other officer . . . . . R. S., s. 2637.  
Customs officers owning vessels or engag-  
ing in importation . . . . . R. S., s. 2638.  
Customs officers failing to render accounts  
of expenditures . . . . . R. S., s. 2639.  
31 July, 1894, s. 19;  
28 Stat. 210.

Andrews v. United States, 2 Story, 202.

Customs officers failing to keep and render  
accounts and records of of transactions . R. S., s. 2640.  
*Chapter Three. — Revenue-Cutter Service.*  
Carrying or hoisting pendant or ensign  
of revenue service by vessel not in  
service; master liable . . . . . R. S., s. 2764.  
*Chapter Four. — Entry of merchandise.*  
Vessel bound for port of delivery failing to  
pay duties, etc., at port of entry; master  
liable . . . . . R. S., s. 2772.

The Saratoga, 9 F. R. 322, 324; 25 A. G. Op. 157.

Vessel departing from port of arrival before  
making report of entry; master liable . . R. S., s. 2773.

The words "more interior district" mean a district farther within  
the indentation of the contiguous country. *United States v. Bearse*,  
4 Mason, 192. It is a departure or an attempt to depart, and not an  
intention to violate the revenue laws, which will justify a seizure. *Le*  
*Tigre*, 3 Wash. C. C. 567, 572. The mere transit through a river  
which is the boundary between the United States and a foreign State,  
for the purpose of proceeding to a foreign port, is not to be deemed an

arrival within the limits of the United States from a foreign port. *The Apollon*, 9 Wheat. 362, 6 L. ed. 111. See S. T. D. 8280, 8308.

Master failing to make report of arrival of  
vessel at port . . . . . R. S., s. 2774.

*The Strathairly*, 124 U. S. 558, 31 L. ed. 580; *The Paolina S.*, 11 F. R. 171; *Badger v. Gutherez*, 111 U. S. 734, 28 L. ed. 581. Under § 30 of the cited statute of 1799, it was held that the report of arrival must be made at the office of the chief officer of the customs; that a report to an inspector, on board the vessel, or in a shop on shore, did not comply with the act, and that report be made, whether the arrival is voluntary, or by stress of weather, or at another than the intended port of discharge. *United States v. Webber*, 1 Gall. 392; *United States v. Rendell*, 1 Curtis, 369; *United States v. Galacar*, 1 Sprague, 545; *United States v. Randall*, Id. 546. See also *United States v. One Gasoline Launch*, 133 F. R. 42; *United States v. Legg*, 105 Id. 930, 932; *Mignano v. MacAndrews*, 53 Id. 958; 24 A. G. Op. 27; 20 Id. 677; S. T. D. (1893), pp. 895, 897.

Master of vessel failing to make special  
report of spirits and wines . . . . . R. S., s. 2775.

19 A. G. Op. 646.

Master neglecting to obtain copy of report  
from collector . . . . . R. S., s. 2784.

25 A. G. Op. 535; S. T. D. (1895), p. 1026.

Vessel having more sea stores than in  
entry; master liable . . . . . R. S., s. 2797.  
3 March, 1897, s. 17;  
29 Stat. 691.

An Ullage Box of Sugar, 1 Ware, 350; 20 A. G. Op. 201.

Concealing dutiable articles in baggage . . R. S., s. 2802.

Occurrences subsequent to the accrual of the right of forfeiture cannot waive that right or estop the United States from asserting it. *United States v. One Purple Cloth Costume*, 158 F. R. 899. A passenger carrying precious stones loose in his pocket must declare

them the same as articles in his trunk. *United States v. 218½ Carats Loose Emeralds*, 153 F. R. 643. The specification of the "trunk" is equivalent to mention of its contents. *United States v. One Trunk*, 171 F. R. 772. As to an insufficient indictment, see *Keck v. United States*, 172 U. S. 434, 453, 43 L. ed. 505. Any dutiable article in the baggage which was not at the time of making the entry of such baggage under § 2799 "mentioned to the collector before whom such entry was made by the person making the entry" is subject to forfeiture under this section, without regard to fraudulent intent, but it is a sufficient "mention" of an article to avoid forfeiture if it is called to the attention of the officer, who, as representative of the collector, takes the entry or declaration, although it is not mentioned therein. *United States v. One Pearl Necklace*, 111 F. R. 164, reversing 105 Id. 357. As to the effect of intention to evade payment, see *The Robert Edwards*, 6 Wheat. 187, 5 L. ed. 238; 23 A. G. Op. 63. This section does not apply to goods smuggled successfully through the custom-house. *United States v. Five Packages of Tapestry*, 114 F. R. 496. This section was not affected by the Act of June 22, 1874, c. 391, and where packages entered as personal effects contain also valuable dutiable goods, such goods only, and not the entire packages, are forfeited. 18 A. G. Op. 326. See *Friedenstein v. United States*, 125 U. S. 224, 31 L. ed. 736; *In re Leszynsky*, 16 Blatch. 9, 18.

Master failing to have correct manifest . . . R. S., s. 2809.

The omission must be intentional to incur forfeiture. *United States v. A Lot of Umbrellas*, 12 F. R. 412; *United States v. The Stadacona*, 4 Am. L. T. 213. It was held that there could be no decree of forfeiture where a practice had long prevailed with the acquiescence of the customs officers to permit officers and crews of vessels to import and pay duties upon merchandise without entering the same upon the vessel's manifest. *United States v. Three Trunks*, 7 Sawyer, 364, 8 F. R. 583. Also *United States v. Hutchinson*, 1 Haskell, 146; *United States v. The Missouri*, 9 Blatch. 433. If the master takes goods without a bill of lading or invoice, intending to

smuggle or enter them, as he may elect, he is the consignee, though the goods were to go to the use of another. *United States v. 10,000 Cigars*, 2 Curtis, 436. The method of procedure is enlarged upon in *United States v. The Queen*, 4 Ben. 237. Originally it was necessary to show that the vessel belonged in whole or in part to a citizen or inhabitant of the United States. *Id.*; *The Bark Antilles*, 8 Id. 9; *United States v. 26 Diamond Rings*, 1 Sprague, 294. The offense is complete when the goods are brought within the limits of a port of entry. *United States v. 10,000 Cigars, supra*; *The Missouri*, 3 Ben. 508. It is too late then to make a manifest. *United States v. 10,000 Cigars, supra*. If a claimant has destroyed the manifest to prevent its being used as evidence, he cannot introduce secondary evidence as to its contents. *The Ariel*, 1 Haskell, 65. On the question as to whether the goods were entered on the manifest of the vessel's cargo, her manifest filed in the custom-house is competent evidence. *United States v. The Missouri, supra*. The value of the goods must be shown. *The Bark Antilles, supra*. As against the government, "shall" in statutes is, in the absence of a contrary intention, to be construed as "may." *Railroad Co. v. Hecht*, 95 U. S. 168, 24 L. ed. 423. See S. T. D. 8073. The Treasury Department has jurisdiction of the remission of fines, penalties and forfeitures imposed by this section, 25 A. G. Op. 535. This section applies only to merchandise belonging or consigned to the master, mate, officers, or crew; and other merchandise which is omitted from the manifest is not forfeitable thereunder. *The Coquitlam*, 77 F. R. 744, reversing 57 Id. 706. It was held in 17 A. G. Op. 82 that the collector may properly refuse a clearance to a vessel violating this section, but that such refusal is not a seizure, and the Act of Feb. 8, 1881, c. 34, does not apply. See *Friedenstein v. United States*, 125 U. S. 224, 226, 31 L. ed. 736.

Master failing to produce manifest upon  
demand of proper officer . . . . . R. S., s. 2814.

3 Int. Rev. Rec. 67; S. T. D. 8308.

Customs officer failing to certify on back of  
manifest the production thereof . . . . . R. S., s. 2814.

- Master of vessel failing to mail copy of manifest to Auditor for Treasury Department . . . . . 2 March, 1895, s. 9; 28 Stat. 808.
- Master failing to deliver duplicate manifests of merchandise for Mississippi River, etc., ports . . . . . R. S., s. 2822.  
16 June, 1880; 21 Stat. 283.
- Master failing to deliver manifests for merchandise for Mississippi River, etc., ports on arrival at port of entry . . . R. S., s. 2822.  
16 June, 1880; 21 Stat. 283.
- Master failing to deliver duplicate manifests of merchandise for ports in District of New Orleans . . . . . R. S., s. 2823.
- Master failing to deliver manifests of merchandise for ports in District of New Orleans on arrival at port of entry . . . R. S., s. 2823.
- Master failing to deliver duplicate manifests on departure from port of entry . . R. S., s. 2828.
- Master failing to deliver manifests to surveyor of port on arrival . . . . . R. S., s. 2829.
- Vessel bound for Natchez and Vicksburg violating revenue laws . . . . . R. S., s. 2832.
- Master failing to deposit manifest . . . . R. S., s. 2834.  
22 June, 1874, s. 2;  
18 Stat. 186.  
3 March, 1897, s. 15;  
29 Stat. 691.
- Master refusing to receive inspector . . . R. S., s. 2834.  
22 June, 1874, s. 2;  
18 Stat. 186.  
3 March, 1907, s. 15;  
29 Stat. 691.
- Making false statement in declaration . . 10 June, 1890, s. 6;  
26 Stat. 134.
- United States *v.* Fawcett, 86 F. R. 900.
- Making false entry of imported merchandise R. S. 2864.  
10 June, 1890, s. 9;  
26 Stat. 135.



The following cases relate to § 2864: — *United States v. Auffmordt*, 122 U. S. 197, 30 L. ed. 1182, 19 F. R. 893; *United States v. 4 Cases*, 10 Ben. 371. See 600 Tons of Ore, 9 F. R. 595; 16 A. G. Op. 158. If the fraud applies only to a portion of the cargo, the whole of it belonging to the same party is forfeited. *Merchandise v. United States*, Chase Dec. 502. "Entry" means any entry so called in custom-house language. *United States v. Baker*, 5 Ben. 25. See *United States v. 28 Packages*, Gilpin, 306. In some statutes "entry" refers to the paper or declaration handed in the first instance to the entry clerk; here it is a transaction, namely, the entering of the goods. *United States v. Cargo of Sugar*, 3 Sawyer, 46, 48. The guilty knowledge of the owner is sufficient, irrespective of that of the agent; and it is immaterial whether or not the collector was actually deceived. *Id.* The penalty is attached to the false entry, not to the result produced on the revenue in the particular instance. *Bollinger's Champagne*, 3 Wall. 560, 18 L. ed. 78. An action of debt lies against whoever knowingly attempts to make a fraudulent entry, whether owner, consignee, or agent. *United States v. Willetts*, 5 Ben. 220. An action for the value of forfeited merchandise is not an action "to recover a fine or penalty," or one "upon contract, express or implied," within § 549 of the New York code. *United States v. Reid*, 21 Blatch. 429, 17 F. R. 497. As to an action of debt not being within the intent of a State Code, see *United States v. Moller*, 10 Ben. 189. "Knowingly" means that the claimant "knew better, and that he was swearing falsely." *Cliquot's Champagne*, 3 Wall. 114, 144, 18 L. ed. 116; 1209 Quarter Casks, 2 Ben. 249. See *Sim v. United States*, 14 Blatch. 553, 554; *Origet v. United States*, 125 U. S. 240, 31 L. ed. 743; *United States v. 2117 Bushels Malt*, 8 F. R. 224. As to *bona fide* purchasers, see *United States v. Four Cases Lastings*, 10 Ben. 371; *United States v. Fifty-three Boxes Havana Sugar*, 2 Bond, 346. As to lien for freight, see *Six Hundred Tons Iron Ore*, 9 F. R. 595. As to an information being good and sufficient, see *United States v. Fifteen Barrels Spirits*, 51 F. R. 416. Value is not limited to the sum received by the defendant for the

identical goods entered, on their sale by him. *United States v. York Street Co.*, 17 Blatch. 138. As to the fact of reappraisement being *prima facie* evidence of an entry, so as to throw the burden of proof on the claimant to show that there was no entry in a libel for forfeiture, see 28 Cases of Wine, 2 Ben. 63. See S. T. D. 8034, 8304.

The following cases relate to the Act of 10 June, 1890, s. 9; 26 Stat. 135:— While it is a condition to the entry of merchandise that invoices should be carried before an American consul, this is not necessarily a part of the entry within the meaning of this section, relating to illegal "entry." In this case it was held that the illegal intent was abandoned before any "attempt" was made to make entry of the goods. *United States v. One Trunk*, 171 F. R. 772. This section covers a case where a person who is consignee falsely describes himself as the owner of the merchandise. *United States v. One Bag of Crushed Wheat*, 166 F. R. 562. The word "entry" does not refer alone to the act of filing at the custom-house the written paper known as an "entry," but embraces the entire transaction of passing the goods through the custom-house, among the various steps of which would be the official returns of customs weighers; and the term "other person" does not embrace all individuals who may be fraudulently concerned in the making of an entry, and would not include a customs weigher, who had merely made false reports of weights in furtherance of an importer's attempt to make an illegal entry. *United States v. Mescall*, 164 F. R. 580, overruled in 215 U. S. 26. Forfeiture does not accrue against a party who was in another country, when the entry was made, where it does not appear that the person making the entry at the custom-house was his agent. *United States v. 646 Half-boxes of Figs*, 164 F. R. 778. It is not essential that there should be a completed fraud upon the United States; it is enough if the act or attempt is of a character to deprive the United States of duty. *United States v. Sixty-six Cases of Cheese*, 163 F. R. 367. Merchandise innocently entered by a person on an invoice fraudulently made out by the foreign shipper is not liable to forfeiture. The falsification must be such that if consummated it would deprive the United States of lawful duties. But

if by itself, without further wrongful acts, it could not, in the regular course of procedure, produce such result, forfeiture is not incurred, even though there may have been wrongful intent. *United States v. Twenty Boxes of Cheese*, 163 F. R. 369. See *United States v. One Silk Rug*, 158 Id. 974. The first part of this section applies only when the means are employed in connection with goods the importation of which is not concealed. The penalty of forfeiture is incurred where a passenger on a steamer willfully omits to mention to the customs officials merchandise in his possession. *United States v. 218½ Carats Loose Emeralds*, 153 F. R. 643. As to an untruthful description of the goods in the invoice, see *United States v. Nineteen Bales of Tobacco*, 112 F. R. 779. See also *United States v. Witteman*, 152 F. R. 377. See, further, as to fraudulent intent, *United States v. 1,150½ Pounds Celluloid*, 82 F. R. 627; *United States v. Nineteen Bales of Tobacco*, 112 Id. 779; *United States v. One Hundred and Twenty-nine Bales Merchandise*, 46 Id. 468. As to reading depositions, see *United States v. Zucker*, 161 U. S. 475, 40 L. ed. 777. As to articles bad for indefiniteness, see *United States v. Fifteen Barrels Distilled Spirits*, 51 F. R. 416. As to an action abating with the defendant's death, see *United States v. Riley*, 104 F. R. 275. As to following State practice, see *United States v. Riley*, 88 Id. 480. As to form of indictment, see *United States v. Fawcett*, 86 Id. 900; *United States v. Cutajar*, 60 Id. 744. See also 20 A. G. Op. 683. That U. S. Rev. Sts. § 3082, was not repealed by this section, see *United States v. A Lot Jewelry*, 59 F. R. 684. See further, *United States v. 1150½ Pounds Celluloid*, 82 F. R. 627; *Hepner v. United States*, 213 U. S. 103, 109, 53 L. ed. 720.

Smuggling merchandise . . . . . R. S., s. 2865.  
 Making or uttering false or forged invoices R. S., s. 2865.

See Act of Feb. 27, 1877, c. 69, (19 Stat. 247). Originally this section did not apply to goods imported from an adjacent territory. *United States v. Nolton*, 5 Blatch. 427; *United States v. Smith*, 2 Id. 127. See *United States v. 67 Packages*, 17 How. 85-89, 15 L. ed. 54. The punishment being infamous, the prosecution cannot

be by information. *United States v. Johannesen*, 35 F. R. 411. See *Dunbar v. United States*, 156 U. S. 185, 190, 39 L. ed. 390, 60 F. R. 75; § 3082. An offense under this section is only a misdemeanor. *Reagan v. United States*, 157 U. S. 301, 303, 39 L. ed. 709. See *United States v. 646 Half-boxes of Figs*, 164 F. R. 778. Smuggling has here a much wider significance than at common law. *Keck v. United States*, 172 U. S. 434, 444, 458, 43 L. ed. 505; 24 A. G. Op. 584. As to a sufficient indictment, see *Keck v. United States*, *supra*. As to when the act of smuggling is complete, see *United States v. 218½ Carats Loose Emeralds*, 153 F. R. 643. See further, *In re Ghazal*, 174 F. R. 809; *United States v. Ortega*, 66 F. R. 713; 23 A. G. Op. 64, 378.

*Chapter Five. — Unlading.*

Unlading without permit . . . . . R. S., s. 2867.

This section was intended to guard against smuggling, and a compliance with the requisites alone, entitles a party to the benefit of the exception; and the accident, necessity, or distress must affect the *condition* of the ship or goods, and not the *voyage* merely. *United States v. Hayward*, 2 Gall. 485, 514. It has been held that this section does not apply where the illegal unlading is after the arrival of the vessel at her intended port of discharge. *The Schooner Industry*, 1 Gall. 114; see *The Schooner Harmony*, Id. 123; *Clark v. Insurance Co.*, 1 Story, 109; *United States v. Brant*, Pet. C. C. 14. It applies only to the captain or mate. *United States v. Smith*, 2 Wash. C. C. 310; see *United States v. Brant*, *supra*. It has been held to comprehend foreign as well as American vessels. *The Schooner Betsey*, 1 Mason, 354. Questions of pleading are considered in *United States v. The Virgin*, Pet. C. C. 7. See S. T. D. 7987. "An illegal unlading within the limits of the United States, and before arrival at any port within such limits, is a violation of § 2867; but an illegal unlading after a vessel shall have arrived at some port within the United States should be prosecuted under § 2872." *Truitt, J.*, in *The Coquitlam*, 57 F. R. 706, 713, following *The Hunter*, 1 Pet. C. C. 10; *The Active*, *Deady*, 165. But see *Cargo ex Lady Essex*, 39 F. R. 765. But the

cargo, to be forfeitable, must be destined for this country. *The Coquitlam*, 77 F. R. 744. See S. T. D. (1892), p. 142; 20 A. G. Op. 677.

Transferring unlawfully from one vessel  
to another . . . . . R. S., s. 2868.

*The Coquitlam*, 77 F. R. 744, reversing 57 Id. 706; *The Cargo ex Lady Essex*, 39 Id. 765; *United States v. Hayward*, 2 Gall. 485; *The Schooner Harmony*, 1 Id. 123; *United States v. The Virgin*, Pet. C. C. 7; 17 A. G. Op. 83.

Unloading of merchandise at unlawful  
hours . . . . . R. S., s. 2873.

See §§ 2867, 3104. Where the master was absent it was held that the penalty must be enforced against the person in command. The knowledge of those who aid must be shown, not that of the master. This section does not apply to the landing of derelict or salvaged goods; to unloading by reason of unavoidable accident, &c.; or where all possible means were used to prevent smuggling. Section 16 of 18 Stat. 186, "does not include the intent of masters of vessels who are made responsible for the illegal and fraudulent removal of goods by persons under their control." *United States v. Curtis*, 16 F. R. 184; see *The Gertrude*, 3 Story, 68. The law applies to all unloading without a permit in any port or place within any collection-district, whether originally intended for the port of discharge or not. *The Industry*, 1 Gall. 114; *The Schooner Harmony*, Id. 123; *The Sarah Bernice*, 1 Haskell, 81; *United States v. 20 Cases*, 2 Biss. 147; *The John C. Brooks*, 3 Ware, 273; *contra*, *United States v. The Hunter*, Pet. C. C. 10; see *United States v. The Virgin*, Id. 7. In the *Active, Deady*, 165, this subject is amply discussed, and the court leans to the decision in *United States v. The Hunter*, *supra*. It has been held that the forfeiture attaches to the unloading, and not to the receiving, vessel. *Clark v. Protection Ins. Co.*, 1 Story, 121; *The Industry*, *supra*. A fraudulent permit is void. *Bottomley v. United States*, 1 Story, 135; *United States v. The Sarah B. Harris*, 4 Cliff.

147, 1 Haskell, 52. It is not necessary to allege the goods to be of foreign growth or manufacture. *The Betsy*, 1 Mason, 354; *The Active, Deady*, 165. Questions of pleading are further considered in *United States v. Burnham*, 1 Mason, 57; *Walsh v. United States*, 3 Wood. & M. 341; *United States v. Hayward*, 2 Gall. 485. Dutiable merchandise imported as passengers' baggage, without attempt to so pass it, the owner, not knowing of the seizure, offering it with correct bills of lading and money for entry, is not forfeitable. *United States v. 95 Boxes*, 19 Int. Rev. Rec. 101; see *United States v. 3 Cases*, 6 Ben. 558. It has been held that an action for the penalty cannot be maintained after conviction and punishment for smuggling. *United States v. Gates*, 4 N. Y. Leg. Obs. 8, 8 Law Rep. 465. As to the application of this section to a person who has goods in his store for sale which he knows have been smuggled, see *Walsh v. United States*, *supra*. "Merchandise" does not include the vessel's own compass. *United States v. Fry*, 48 F. R. 713. See further, *United States v. Randall*, 1 Sprague, 546; *The E. K. Dresser*, 2 Haskell, 349.

- Inspector neglecting duties . . . . . R. S., s. 2877.
- Landing of wines or spirits without indorsement or permit . . . . . R. S., s. 2883.
- Obliterating, etc., inspection marks, etc. . . R. S., s. 2886.
- Sealing, etc., empty cask, etc., before obliteration of inspection marks . . . . . R. S., s. 2886.

*United States v. Halberstadt*, Gilp. 262.

- Merchandise missing or omitted from manifest . . . . . R. S., s. 2887.

A surplus as well as a deficiency is a disagreement, and to evade the penalty the defendant must bring himself within the exceptions named in the statute. *United States v. Fairclough*, 4 Wash. C. C. 398. See *United States v. Graff*, 14 Blatch. 381, 394. This section does not protect from forfeiture goods found concealed on board after the master has declared that the whole cargo is discharged. *United States v. Cane*, 3 Hall's L. J. 176.

*Chapter Six. — appraisal.*

Refusing to testify or swearing falsely before appraiser . . . . . 10 June, 1890, s. 17;  
26 Stat. 139.

22 A. G. Op. 456.

*Chapter Seven. — The bond and warehouse system.*

Failing to remove or destroy, etc., stamps on packages or casks that had contained imported liquors . . . . . 1 March, 1879, s. 12;  
20 Stat. 342.  
28 May, 1880, s. 12;  
21 Stat. 148.

See § 3324.

Selling or having in possession empty cask or package with undestroyed stamp affixed . . . . . 1 March, 1879, s. 13;  
20 Stat. 343.  
28 May, 1880, s. 13;  
21 Stat. 148.

Altering, defacing, or obliterating mark of revenue officer on package of warehoused merchandise . . . . . R. S., 2985.  
Unlawfully opening warehouse . . . . . R. S., s. 2986.

United States v. George, 6 Blatch. 406.

Fraudulently removing or concealing warehoused merchandise . . . . . R. S., s. 2987.  
Failure to transport and deliver merchandise from port in one collection district to port in another district . . . . . R. S., s. 3001.

United States v. Coppell, 48 F. R. 367; 21 A. G. Op. 117, 304; 15 Id. 129; S. T. D. (1892), p. 1303; United States v. Pingree, 1 Sprague, 339.

Relanding merchandise exported to Mexico or to British North American provinces . . . . . R. S., s. 3008.

*Chapter Eight. — Immediate transportation in bond to inland ports.*

Opening, breaking, etc., any car, vessel, etc., containing merchandise delivered for transportation . . . . . R. S., s. 2998.

This was held not to apply where a freight-car containing merchandise was broken into on the Northern Pacific Railroad, the merchandise having been delivered for transportation through the United States from Victoria, B. C., to Montreal. *United States v. Durwood*, 49 F. R. 446. See 21 A. G. Op. 304.

Knowingly receiving merchandise unlawfully removed from car, vessel, etc. . . . R. S., s. 2998.

*Chapter Ten. — Drawback.*

Relanding goods entered for drawback . . . R. S., s. 3049.  
24 July, 1897; 30  
Stat. 195.

Goods on a ship were entered for exportation, but no bond under § 3043 was given and no debenture issued. Upon being put on a lighter lying alongside of the ship, they were seized. A suit was brought to enforce the forfeiture, and a verdict for the United States was directed. The claimant moved for a new trial. It was held that placing the goods in the lighter amounted to a relanding within this section; that a landing in the port of exportation before the ship had broken ground was also within the section; and that the forfeiture attached notwithstanding no bond had been given or debenture issued. Nor would evidence that the claimant caused the goods to be relanded, solely to correct a mistake by which he had been led to enter for export a different quality of goods from that intended to be exported, afford any defense. *2000 Tin Cans*, 7 Ben. 34. See *Re Leszynsky*, 16 Blatch. 9, 17, 19.

Making false entry for benefit of drawback R. S., s. 3050.

If goods are entered by a false denomination, then they are subject to forfeiture, unless the party can bring himself within the exceptions of the statute, and the *onus probandi* rests on the plaintiff to extract the case from the penal consequences of an infraction of the law (*Barlow v. United States*, 7 Pet. 404, 409, 8 L. ed. 728); and ignorance of the law is of no avail. *Id.*

*Chapter Eleven. — Enforcement of customs laws.*

Person in charge of beast or vehicle refusing to allow search . . . . . R. S., s. 3062.



*Ex parte Barclay*, 153 F. R. 669; *United States v. One Black Horse*, 147 Id. 770. See S. T. D. 8011, 8084; 23 A. G. Op. 63, 70. See, also, § 3104.

Master obstructing or hindering officer  
from boarding vessel . . . . . R. S., s. 3068.

No indictment lies for resisting an officer of the customs while making a seizure without probable cause. *United States v. Gay*, 2 Gall. 359. The act of hindering and obstructing must be that of the master, and is proved if his vessel does not heed signals but keeps up her speed. *The Barracouta*, 42 F. R. 160. See *United States v. Keen*, 5 Mason, 453.

Articles separate from cargo missing, or  
seals broken on arrival at port of entry;  
master liable . . . . . R. S., s. 3069.  
Unlawfully breaking locks and fastenings . . . . . R. S., s. 3070.  
Refusing to assist officer in making search . . . . . R. S., s. 3071.  
Importing merchandise contrary to law . . . . . R. S., s. 3082.  
Knowingly buying, selling, receiving, etc.,  
merchandise imported contrary to law . . . . . R. S., s. 3082.

See § 2865. In the case of *Stockwell v. United States*, 13 Wall. 531, 20 L. ed. 491, 3 Cliff. 284, this act was held to be cumulative rather than substitutionary, and that it did not repeal § 2 of the Act of March 3, 1823. In *United States v. Clafin*, 97 U. S. 546, 24 L. ed. 1082, 13 Blatch. 184, 14 Id. 55, the case of *Stockwell v. United States* is fully discussed, and held to be correctly decided, although the court doubts "the correctness of the opinion we expressed when the case of *Stockwell* was before us." The case of *United States v. Clafin* also holds that this section contemplates a criminal proceeding and not a civil remedy; that an action of debt will not lie by the United States against a person violating, and that it repeals § 2 of the Act of 1823 referred to. This section comprehends any merchandise imported contrary to law, and is not limited to merchandise sent or received for sale. *Cotzhausen v. Nazro*, 107 U. S. 215, 27 L. ed. 540, 15 F. R. 891, 898, 11 Biss. 44; *United States v. Ninety-five Boxes*, 27 Fed. Cas. No. 171. See *United States*

*v. Five Packages*, 114 F. R. 496. The evidence necessary to convict is discussed in *Boxes of Opium*, 9 Sawyer, 259, 8 Id. 129, 23 F. R. 367, 12 Id. 402. See *United States v. 90 Demijohns*, 4 Woods, 637, 8 F. R. 485; *Friedenstein v. United States*, 125 U. S. 224, 31 L. ed. 736. See *Richmond Co. v. Trammel*, 53 F. R. 196, 201. The provision that the possession shall be deemed evidence, etc., unless explained, does not impair the right to trial by jury. *Tilley v. Savannah R. Co.*, 4 Woods, 427, 5 F. R. 641, 659. In *The Henrietta Esch*, 12 F. R. 483, the case largely turned upon the credibility of the witnesses. See *Six Parcels v. United States*, 8 Ariz. 389, 394.

For a case where it was decided that an indictment could not be upheld, as the alleged offense was committed before the Act of 1866 was passed, see *United States v. Nolton*, 5 Blatch. 427; also *United States v. Smith*, 2 Id. 127. "Importing goods subject to duties, without an invoice and consular certificate, and without entry in the manifest, is not such an importation as the law permits to be made." *United States v. 9 Trunks*, 22 Int. Rev. Rec. 317, criticising *United States v. Thomas*, 4 Ben. 370, and *United States v. 95 Boxes*, 19 Int. Rev. Rec. 101. See *United States v. Jordan*, 2 Lowell, 537, which is in harmony with *United States v. 9 Trunks*, and which gives the history of this section. See also *United States v. 2419 Sheepskins*, 2 Haskell, 394, 402; *United States v. 3 Cases*, 18 Int. Rev. Rec. 173; *The Ariel and Cargo*, 1 Haskell, 65, 76. A later case holds that bringing in merchandise "contrary to law" does not include frauds or illegalities concerning the invoicing of the same, or the payment of duties thereon, which can only occur after the importation is accomplished, and the merchandise brought within the cognizance of the customs officers. *United States v. Kee Ho*, 33 F. R. 333; *United States v. Clafin*, 13 Blatch. 178, 97 U. S. 546, 24 L. ed. 1082. See *Lewey v. United States*, 15 Blatch. 1; *Fifty-three Boxes*, 2 Bond, 346. It is the secret and clandestine manner of the importation, coupled with the intent to defraud the revenue, and the non-payment of or not accounting for the duties prior to the importation, that constitutes the gist of the offense of smuggling under this section. *United States v. Thomas*, 4 Ben. 370, 2 Abb. U. S. 114. Mere possession

of the goods is not sufficient to authorize a conviction under this section. It is necessary to prove in addition that the goods were imported contrary to law, and that the party importing them had knowledge of that fact. *United States v. A Lot of Jewelry*, 13 Blatch. 60. An indictment under this section must state with reasonable certainty in what the illegality of the importation consists. It is not sufficient to charge in the language of the section that the goods were imported "contrary to law," or with having received or bought the same after being so imported. *United States v. Kee Ho*, 33 F. R. 333; *United States v. Thomas*, 4 Ben. 370, 375, 2 Abb. U. S. 114; *United States v. Claffin*, 13 Blatch. 178, 97 U. S. 546, 24 L. ed. 1082. An indictment for buying goods which have been brought into the United States contrary to law need not set out the offense committed in the original importation, with the same particularity of time, place, and circumstances that would be required in an indictment for the original offense. *United States v. Claffin, supra*. Where words are added, in an indictment, to the words of the statute, the charge must be confined to the illegality thus described. *Id.*; citing *United States v. Thomas, supra*. Merchants who bought wrecked goods on which no duty was paid, were held not liable to a penalty in *United States v. Cook*, 1 Sprague, 213. It was held under the old statute that the mere acts of resisting the officers of the customs, and of casting packages of goods out of a window, whereby they were entirely removed from their possession and custody, do not constitute *per se* in point of law a concealment of the goods. The defendant may have concurred in either or both of these acts, and yet may not have been a party to the subsequent removal and concealment. *United States v. Farnsworth*, 1 Mason, 1. It has been held that a vessel on which an iron cable was smuggled is not liable to forfeiture *in rem*, the penalty attaching to the person. *Clark v. Insurance Co.*, 1 Story, 109. The forfeiture of the goods is to secure indemnity to the government for the wrong done, and the fine and imprisonment are superadded as a vindication of public justice. *Re Leszynsky*, 16 Blatch. 9, 14; *United States v. Claffin, supra*; *Dunbar v. United States*, 156 U. S. 185, 190, 39 L. ed. 390;

United States *v.* Wan Lee, 44 F. R. 707; United States *v.* The Walla Walla, Id. 796; United States *v.* 740 Tins of Opium, Id. 798; S. T. D. (1894), p. 285. As a suit *in rem* is here authorized, the statute is not merely criminal; the information may be amended. United States *v.* A Lot of Jewelry, 59 F. R. 684. This section was not repealed by the revising Act of Feb. 27, 1877, or the Act of June 10, 1890. Id.; United States *v.* Ortega, 66 F. R. 713. The words "contrary to law" refer to provisions of law not here found. Keck *v.* United States, 172 U. S. 434, 437, 43 L. ed. 505; see One Pearl Chain *v.* United States, 123 F. R. 371; 24 A. G. Op. 61, 586; 23 Id. 64, 378. As to a case arising in Porto Rico, see Amado *v.* United States, 195 U. S. 172, 49 L. ed. 145. See further, Reagan *v.* United States, 157 U. S. 304, 39 L. ed. 709; United States *v.* One Pearl Chain, 139 F. R. 510; United States *v.* A Lot of Precious Stones, 134 Id. 61.

Officer receiving part of informer's fee,  
except in smuggling cases . . . . . 22 June, 1874, s. 7;  
18 Stat. 187.

*In re* Ghazal, 174 F. R. 809.

Officer offering to compromise claims for  
fines, etc. . . . . 22 June, 1874, s. 19;  
18 Stat. 190.  
22 Jan., 1875; 18  
Stat. 303.

14 A. G. Op. 511.

*Chapter Twelve. — Commerce with contiguous countries.*

Master, or other person failing to deliver  
manifests of goods from contiguous  
territory . . . . . R. S., s. 3099.

The terms "other person" and "other importer" are used in a comprehensive sense. Steinham *v.* United States, 2 Paine, 168. It is not essential that the person whose duty it is to deliver a manifest should be on board the vessel, boat, or vehicle at the moment of crossing the line in order to subject him to the penalty. Id. It is sufficient if the declaration pursues substantially the words of the Act,

and it need not state to whom the foreign country belonged. *Id.* See *Stockwell v. United States*, 13 Wall. 531, 20 L. ed. 491; *United States v. Claffin*, 97 U. S. 546, 24 L. ed. 1082; *United States v. The Margaret Yates*, 22 Vt. 663; *Steinham v. United States*, 2 Paine, 168; *United States v. Smith*, 2 Blatch. 127; 134, 901 Feet Pine Lumber, 4 *Id.* 182; *The Fame*, Brown, Adm. 42; *United States v. One Sorrel Stallion*, 51 F. R. 877. The driver of a vehicle arriving from Canada is required to file a manifest only when the vehicle contains merchandise subject to duty, not including passengers' or immigrants' baggage or effects. S. T. D. (1895), p. 70.

Owner, master, etc., of vessel failing to  
proceed to places of destination named  
in manifest . . . . . R. S., s. 3104.

*United States v. The Snow Drop*, 30 F. R. 79; *The Saratoga*, 15 *Id.* 382, 9 *Id.* 322; *United States v. Curtis*, 16 *Id.* 184, 191.

Unauthorized person breaking, etc., sealed  
packages, etc. . . . . R. S., s. 3105.

*United States v. Three Railroad Cars*, 1 Abb. U. S. 196.

Receiving or depositing unlawfully im-  
ported merchandise in building on  
boundary line . . . . . R. S., s. 3108.

Shipping sea stores in excess of amount  
necessary . . . . . R. S., s. 3112.

Owner failing to report saloon stores . . . R. S., s. 3113.

21 A. G. Op. 92, 94.

Unloading merchandise taken from one  
port in United States to another in other  
than specified hours . . . . . R. S., s. 3120.

17 A. G. Op. 433.

Masters of vessels engaged in foreign and  
domestic trade on northern etc., fron-  
tiers, etc., failing to observe rules in R. S.  
ss. 3116 to 3124, inclusive . . . . . R. S., s. 3125.

*United States v. The Queen*, 4 Ben. 237, 11 Blatch. 416; *The Mis-  
souri*, 3 Ben. 508, 9 Blatch. 433.

Registered vessels touching at foreign ports  
failing to observe laws concerning mani-  
fests and report and entry of vessels . . . R. S., s. 3126.

The Ariel and Cargo, 1 Haskell, 65, 76.

Master of vessel failing to observe certain  
rules of Secretary of Treasury concern-  
ing entry of vessels laden with products  
of British North America provinces . . . R. S., s. 3129.

## TITLE XXV

### INTERNAL REVENUE

#### *Chapter One. — Officers.*

Internal-revenue officers making false state-  
ment or failing to render statement of  
fees . . . . . R. S., s. 3158.

United States v. Finlay, 1 Abb. U. S. 364, 3 Pitts. R. 126.

Internal-revenue officers disclosing oper-  
ations of manufacturers, etc. . . . . R. S., s. 3167.  
28 Aug., 1894, s. 34;  
28 Stat. 557.

Boske v. Comingone, 177 U. S. 459, 462, 44 L. ed. 846; Ledbetter  
v. United States, 170 Id. 606, 42 L. ed. 1162.

Internal-revenue officers or agents becom-  
ing interested in certain manufactures . . . . . R. S., s. 3168.  
1 March, 1879, s. 2;  
20 Stat. 329.

Certain offenses of internal-revenue of-  
ficers:

Being guilty of extortion, etc., under  
color of law . . . . . R. S., s. 3169.  
1 March, 1879, s. 2;  
20 Stat. 329.

Demanding or receiving other or  
greater fees than those allowed by  
law . . . . . R. S., s. 3169.  
1 March, 1879, s. 2;  
20 Stat. 329.

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| Neglecting to perform duties enjoined<br>by law . . . . .                 | R. S., s. 3169.<br>1 March, 1879, s. 2;<br>20 Stat. 329. |
| Conspiring or colluding to defraud<br>the United States . . . . .         | R. S., s. 3169.<br>1 March, 1879, s. 2;<br>20 Stat. 329. |
| Making opportunity for person to de-<br>fraud the United States . . . . . | R. S., s. 3169.<br>1 March, 1879, s. 2;<br>20 Stat. 329. |
| Enabling other person to defraud the<br>United States . . . . .           | R. S., s. 3169.<br>1 March, 1879, s. 2;<br>20 Stat. 329. |
| Permitting violation of law . . . . .                                     | R. S., s. 3169.<br>1 March, 1879, s. 2;<br>20 Stat. 329. |
| Making false entry or signing false<br>certificate . . . . .              | R. S., s. 3169.<br>1 March, 1879, s. 2;<br>20 Stat. 329. |
| Failing to report knowledge of viola-<br>tion of revenue laws . . . . .   | R. S., s. 3169.<br>1 March, 1879, s. 2;<br>20 Stat. 329. |

Officials and private persons may not be joined in one indictment under § 3169. *United States v. McDonald*, 3 Dillon, 543. But counts for a conspiracy to defraud and for having a knowledge of a violation of the internal-revenue laws may. If both charges, however, constitute substantially but one offense, the court should render but one judgment on the verdict. *Ex parte Joyce*, 23 Int. Rev. Rec. 297. In order to find an officer or agent guilty of demanding or receiving greater sums than he is entitled to, the jury must be satisfied that he knew he was violating the law. *United States v. Highleyman*, 22 Int. Rev. Rec. 138. Terms of compromise proposed to the Commissioner before trial on an indictment under § 3169, do not come within the purview of § 3229. 14 A. G. Op. 43. See *United States v. Cullerton*, 8 Biss. 166. And

for construction of § 3169 and evidence, see *United States v. McKee*, 3 Dillon, 546 and 551; *United States v. Babcock*, Id. 581. As to extortion, oppression, compromise of charge, or complaint, see *United States v. Deaver*, 14 F. R. 595, 4 Crim. Law Mag. 209; *Clark v. United States*, 60 Ga. 156.

The offenses in the first and second paragraphs are distinct. *United States v. Harned*, 43 F. R. 376, 378. See 36 Int. Rev. Rec. 47. Services charged as rendered "under color of office" are not rendered in "the performance of a duty" as specified in clause 2 of this section. *United States v. Williams*, 76 F. R. 223, 227.

Clauses 1, 2 of § 3169 relate to offenses of officers or agents acting under the revenue laws. *Williams v. United States*, 168 U. S. 382, 42 L. ed. 509.

Officers in the revenue service, who conspire with others to defraud the United States, may be prosecuted under § 3169, or they may be joined with the individual conspirators in an indictment under § 5440. *Grunberg v. United States*, 145 F. R. 81. Counts charging a defendant with the forgery of Chinese duplicate certificates, with uttering them, and with violating § 3169, as an officer in the revenue service, by negligently and designedly permitting the commission of such offenses, may be joined in the same indictment, under § 1024. *Dillard v. United States*, 141 F. R. 303. As to negligently and designedly permitting a violation of the law by another person, see *Mason v. United States*, 162 F. R. 23.

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| Collectors issuing stamps before collection of tax . . . . . | 1 March, 1879, s. 1;<br>20 Stat. 327. |
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| District attorney demanding or accepting anything for compromise of violation of internal-revenue laws . . . . . | R. S., s. 3170. |
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*Chapter Two. — Assessments and collections.*

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| Owner of premises refusing to admit revenue officers or interfering with same . . . . . | R. S., s. 3177.<br>1 March, 1879, s. 2;<br>20 Stat. 329. |
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National banks are not exempt from examination by any internal-revenue officer here mentioned. But a supervisor's clerk is not such



an officer. *United States v. Rhawn*, 11 Phila. 521, 22 Int. Rev. Rec. 235. In an action by the United States to recover a forfeiture of \$500 under this section, for a refusal to allow a collector to examine paid bank checks, it was held that as the information did not allege that the said checks were not duly stamped, it was insufficient. *United States v. Mann*, 95 U. S. 580, 24 L. ed. 531. An indictment charging in the words of the statute that the defendant "did forcibly attempt to rescue" property seized by a revenue collector does not specify with sufficient certainty what acts were done which constituted the attempt. *United States v. Ford*, 34 F. R. 26. A person may be guilty under this section of the offense of obstructing or hindering an officer from entering a building for the purpose of examination, even though he does not own the building or the articles subject to tax, and did not make, produce, or keep them. *United States v. Fears*, 3 Woods, 510. See also the same case as to the requisites of an indictment under this section. An internal-revenue officer who has obtained information of the violation of an internal-revenue law, in the manner authorized by this section, is entitled to an informer's share of the proceeds of the fine or forfeiture. 13 A. G. Op. 369. See *United States v. Patrick*, 54 F. R. 338, 344.

Making false return to collector . . . . . R. S., s. 3179.

Where two persons composing a partnership make and sign, in their partnership name, a false return to the collector or his deputy, they may be jointly indicted therefor. *United States v. McGinnis*, 1 Abb. U. S. 120.

*Chapter Three. — Special taxes.*

Failing to display special-tax stamp in

place of business . . . . . R. S., s. 3239.

1 Oct., 1890, s. 26;  
26 Stat. 618.

As to Oklahoma, see 19 A. G. Op. 306. Regulations made by the commissioner of internal revenue respecting the assessment and collection of the taxes have the force of statutes, and his acts are presumed to be the acts of the Secretary. The collectors cannot be

compelled by a State court to disclose matters recorded in the internal-revenue office, when the disclosure violates such regulations. *In re* Huttman, 70 F. R. 699; *In re* Weeks, 82 Id. 729. But matters of which the public are entitled to notice under § 3240, such as an application for payment of the internal-revenue tax as a retail dealer, are not privileged even in the State courts. *In re* Hirsch, 74 F. R. 928.

A collector cannot be compelled to disclose as a witness before a court or the grand jury the names of persons in whose places of business special-stamp taxes are posted, or the places in which the same are posted. *In re* Huttman, 70 F. R. 699; *In re* Weeks, 82 Id. 729; *In re* Comingore, 96 Id. 552, affirmed by 177 U. S. 459, 44 L. ed. 846; *In re* Lamberton, 124 F. R. 446. But see *In re* Hirsch, 74 Id. 928; *United States v. Clare*, 2 Id. 55, 57.

Carrying on business as rectifier, liquor-dealer, etc., without payment of special tax . . . . .

R. S., ss. 3242, 3281.  
8 Feb., 1875, s. 16;  
18 Stat. 310.  
13 June, 1898, s. 36;  
30 Stat. 467.

It has been held that violations of this section must be prosecuted by presentment or indictment, and not by information. *United States v. Johannesen*, 35 F. R. 411. If the indictment charges the defendant with carrying on the business of a retail liquor-dealer continuously between certain dates at a certain place, it need not state the means or circumstances by which he did so. *United States v. Howard*, 1 Sawyer, 507. And the same rule holds in the case of a wholesale dealer. *United States v. Page*, 2 Sawyer, 353. It need not aver that a defendant, who is charged with carrying on the business of a distiller, in any of the ways specified in Rev. Sts. § 3247, without having paid the special tax or given bond, has registered his still or given notice of his intention to distil. *United States v. Mathoit*, 1 Sawyer, 142. A count for retailing liquor without payment of the special tax, and a count for dealing in manufactured tobacco without

payment of the special tax, cannot be joined in one indictment, the penalty for each being different. *United States v. Gaston*, 28 F. R. 848. An affidavit which is the basis of an information should conform substantially to the language of the statute alleged to have been violated. One which states that a party *sold* tobacco will not support an information charging him with carrying on the business of a retail dealer in tobacco without payment of the special tax. *United States v. Strickland*, 25 F. R. 469. Distilled spirits cannot lawfully be sold in any quantity or for any purpose by any person who has not paid the special tax. Doctors and druggists who sell distilled spirits as medicine are within the prohibition. *United States v. Stafford*, 20 F. R. 720. As to who is a retail liquor dealer, see *United States v. Rennecke*, 28 F. R. 847; *United States v. Angell*, 11 Id. 34. The janitor of a club which owned liquors and kept them for the use of its members, who used them on paying him the price thereof, is a retail dealer. *United States v. Woods*, 3 Cin. L. Bul. 59. One is not who sells an occasional drink of spirits out of a bottle not in a bar-room. *United States v. Jackson*, 1 Hughes, 531. Nor is one who sells a lot of spirits taken for debt. *United States v. Feigelstock*, 14 Blatch. 321. A grocer, who purchases a barrel of whiskey to oblige a customer, and who enters on his books a charge against the customer of exactly the same amount as he paid for the whiskey, is not a wholesale dealer under obligation to pay the special tax. *United States v. Howell*, 20 F. R. 718. As to what acts will constitute a retail liquor dealer a wholesale dealer, see *United States v. Kallstrom*, 30 F. R. 184. As to wholesale dealers in malt liquors, see *United States v. Schneider*, 35 F. R. 107. The special tax must be paid in advance. *United States v. Clare*, 2 F. R. 55, 14 Phila. 543. An assessment of the tax, and a demand and refusal to pay by the person carrying on business as described in this section, are not a condition precedent to the imposition of a penalty. *United States v. Rectifying Establishment*, 11 Int. Rev. Rec. 46, overruling *United States v. 35 Barrels*, 9 Id. 67. That provision is constitutional which declares real property forfeited which is employed in the violation of a revenue law. *United States v. A Distillery*, 2 Abb. U. S. 192. Such

real estate as pasture, orchard, wood lots, or homestead of the family, etc., which have no connection with the unlawful business, were not used in it, and contributed in no degree to facilitate its prosecution, are not liable to forfeiture. *United States v. Spreckens*, 1 Sawyer, 84. If a person having a wash and also a still on his premises, the latter not being an authorized distillery, distils fermented liquors, the personal property found on the premises shall be forfeited though the product of the establishment be not spirits but vinegar. *United States v. Steen*, 6 Ben. 172. This section is construed and the distinction between the distiller's property and the property of others as regards forfeiture pointed out in *United States v. A Distillery at Spring Valley*, 11 Blatch. 255. The limitation for the prosecution of the offenses of carrying on the business of distilling without having paid the special tax, given a bond, or provided a bonded warehouse, was, by Act of March 26, 1804, extended to five years. *United States v. Wright*, 3 Am. L. T. U. S. Ct. 17, 3 Pittsb. 192. See § 838. Other cases on this section are: *Gregory v. United States*, 17 Blatch. 325; *United States v. Logan*, 12 Int. Rev. Rec. 146, 11 Id. 181; *Re 2000 Bottles*, 5 Ben. 265. As to retail dealers, see further, *United States v. Dunham*, 33 F. R. 834; *United States v. Cline*, 26 Id. 515; *United States v. Giller*, 54 Id. 656; *United States v. Wittig*, 2 Lowell, 466; *United States v. Woods*, 28 Fed. Cas. 762; *United States v. Alexis Club*, 98 F. R. 725; *Commonwealth v. Smith*, 102 Mass. 144; *United States v. Bonham*, 31 F. R. 808. As to branch houses, see *United States v. Chevallier*, 107 F. R. 434, affirming 102 Id. 125; *De Bary v. Louer*, 101 Id. 425. As to commission merchants, see *Quinn v. Dimond*, 72 F. R. 993. As to an officer of the army in charge of a post exchange, see *Dugan v. United States*, 34 Ct. Cl. 458. As to a good defense in case of a single sale, see *Ledbetter v. United States*, 170 U. S. 606, 610, 42 L. ed. 1162; *United States v. Shriver*, 23 F. R. 134. As to medicinal preparations, see *United States v. Stubblefield*, 40 F. R. 454. See also *United States v. Cota*, 17 Id. 734. As to intent to defraud, see *United States v. White*, 42 F. R. 138. See further, *Low v. United States*, 169 F. R. 86; *In re Mills*, 135 U. S. 263, 34 L. ed. 107; *United States v. Mallard*, 40 F. R. 151;

*Ex parte Friday*, 43 Id. 916, 919. It is the dealing in liquors that constitutes the taxable business, and not their ownership. *United States v. Allen*, 38 F. R. 736. A druggist who *bona fide* uses spirituous liquor exclusively in preparing medicines, which he sells as such in good faith, and not as a beverage, is not required to pay the special tax. *United States v. Calhoun*, 39 F. R. 604; *United States v. Starnes*, 37 Id. 665. See *United States v. White*, 42 Id. 138. But a physician must pay such tax if he keeps such liquor on hand and sells it to his patients, even by way of prescription. *United States v. Smith*, 45 F. R. 115.

One who sells liquor knowing it to be such may be convicted for the non-payment of a tax, although the article is put up in bottles and labelled as an appetizer. *United States v. Bray*, 113 F. R. 1008. See *United States v. Starnes*, 37 Id. 665. See § 1014. This statute (§ 3281) is not unconstitutional by reason of providing for a forfeiture of real estate. Congress has power to determine what measures are requisite to enforce the collection of a tax (*United States v. A Distillery*, 2 Abb. U. S. 192; *United States v. McKinley*, 4 Brewst. (Penn.) 246; or to require a bond of one who engages in the business of distilling (*Mason v. Rollins*, 2 Biss. 99)). It is not necessary in an indictment under this section to allege the particular means by which the United States are defrauded of the tax. *United States v. Simmons*, 96 U. S. 360, 24 L. ed. 819. As to what is sufficient, see *United States v. Simmons*, *supra*; *Coffey v. United States*, 116 U. S. 427, 434, 29 L. ed. 681; *United States v. Staton*, 25 Int. Rev. Rec. 10, 2 Flipp. 319. A proceeding against a distillery for forfeiture under the revenue laws is not a criminal proceeding within the meaning of the Constitution, but a proceeding strictly *in rem*. *United States v. Three Tons of Coal*, 6 Biss. 379. Upon an information to obtain the forfeiture of a distillery and the things connected therewith, it is not sufficient to say "all the boilers, stills, and other vessels used in the distillation of spirits, and all the distilled spirits, being about twelve barrels now in the distillery, owned by, and until seized in the possession of," etc. *United States v. Distillery*, 4 Biss. 26. Only such spirits as are owned by the illicit distiller, and

not such as are in the possession of *bona fide* purchasers on which the tax has been paid, and in relation to which all requirements of law have been fulfilled, are liable to forfeiture hereunder. *United States v. 100 Barrels*, 23 Int. Rev. Rec. 10. The words "owned by such person wherever found" should be construed to mean "wherever found of which he is the owner." "Owner" is here used in a popular and not a technical sense. The intention of Congress was to condemn the property of the delinquent to the extent to which it, in fact, existed in him at the time of seizure without reference to the technical legal title. *United States v. 372 Pipes*, 5 Sawyer, 421. This section (3281) is construed in *United States v. One Copper Still*, 8 Biss. 270, where it was held that personal property situated upon distillery premises and used in the business of illicit distilling is subject to forfeiture by the government irrespective of its ownership. Under this section (3281) it seems that only the *right* and *interest* of the owner of inculpatated distillery premises can be condemned and forfeited. *Heidritter v. Elizabeth Oil Cloth Co.*, 6 F. R. 138, 11 Repr. 595. As to what land is not subject to forfeiture, see *United States v. Spreckens*, 1 Sawyer, 84. In providing for the forfeiture of the interest in the land on which a distillery is situated of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or who has connived at the same, it is not requisite that he should have knowingly suffered or permitted it to be *fraudulently* carried on, or that he should have connived at such fraud. *United States v. The Distillery at Spring Valley*, 11 Blatch. 255. In order to forfeit the personal property of a person who has permitted or suffered his premises to be used for purposes of ingress or egress to or from an illicit distillery, it is necessary to show that such person knew that the ingress or egress over his premises was to or from an illicit distillery. *Gregory v. United States*, 17 Blatch. 325. The forfeiture operates at the time of the seizure and not at the time when the statute is violated. *United States v. Feigelsstock*, 14 Blatch. 321. Prior to St. Feb. 8, 1875, this section was held not to apply to a wholesale liquor dealer who had not paid the special tax. *2000 Bottles of Liquors*, 5 Ben. 265. Under this section any

number of acts, no matter how numerous, which go to show that the government has been defrauded of a tax are admissible. *United States v. Staton, supra*. But a single transaction does not constitute a person a dealer. *Rahter v. Bank of Lancaster*, 92 Penn. St. 393. And a sale of whiskey cannot be avoided by the vendee, because it is made in violation of law. The United States does not prohibit the sale of whiskey, but only imposes a penalty for the violation of the laws relating thereto. *Id.* As to limitation of proceedings hereunder, see *United States v. Wright*, 3 Am. L. T. (U. S. Cts.) 17, 3 Pitts. 192, and *United States v. Mathoit*, 1 Sawyer, 142. See also *United States v. 100 Barrels of Spirits*, 1 Dillon, 64; *United States v. Harbison*, 13 Int. Rev. Rec. 118.

Forfeiture takes effect immediately upon the commission of the acts denounced by the statute. *United States v. Stowell*, 133 U. S. 1, 33 L. ed. 555; *United States v. One Distillery*, 43 F. R. 846, 852, 174 U. S. 149, 43 L. ed. 929. A sale of the premises on which the distillery is situated, under a decree of a United States circuit court, in a proceeding *in rem* to enforce the forfeiture, does not pass a mortgagee's title under a mortgage previously made, if such mortgagee has not permitted or connived at the illicit distillery; if the mortgagor is the only party to the proceedings, only his equity of redemption passes. *United States v. Stowell*, 133 U. S. 1, 33 L. ed. 555; *Mansfield v. Excelsior Ref. Co.*, 135 U. S. 326, 34 L. ed. 162; *Glenn v. Winstead*, 116 N. C. 451, 456. As to a former conviction under § 3296 not being a bar, see *United States v. Three Copper Stills*, 47 F. R. 495; *Dobbin's Distillery v. United States*, 96 U. S. 395, 24 L. ed. 637; *United States v. 246½ Pounds Tobacco*, 103 F. R. 791; *Cuzner v. California Club*, 155 Cal. 303, 315.

Manufacturing oleomargarine without  
payment of special tax . . . . . 2 Aug., 1886, s. 4;  
24 Stat. 209.

*Commonwealth v. Mills*, 157 Mass. 405, 406; *Commonwealth v. McDonnell*, *Id.* 407. "It is manifest that this section (3243) was incorporated into the Act of Aug. 2, 1886, to make it clear that Congress had no purpose to restrict the power of the States over

the subject of the manufacture and sale of oleomargarine within their respective limits. The taxes prescribed by that Act were imposed for national purposes, and their imposition did not give authority to those who paid them to engage in the manufacture or sale of oleomargarine in any State which lawfully forbids such manufacture or sale, or to disregard any regulations which a State might lawfully prescribe in reference to that article." Harlan, J., in *Plumley v. Massachusetts*, 155 U. S. 461, 466, 39 L. ed. 223. See *United States v. Eaton*, 144 U. S. 677, 36 L. ed. 591; 37 Int. Rev. Rec. 77, 229; *In re Worthen*, 58 F. R. 467; *Ex parte Scott*, 66 Id. 45.

State legislation regulating the sale of oleomargarine is valid since the Act of Aug. 2, 1886, as well as before. *State v. Newton*, 50 N. J. L. 534; *Commonwealth v. Huntley*, 156 Mass. 236, 249; *Commonwealth v. Mills*, 157 Mass. 405; *Commonwealth v. Crane*, 158 Mass. 218; *Commonwealth v. Kelly*, 163 Mass. 169; *Commonwealth v. Paul*, 148 Penn. St. 559; *Commonwealth v. Schollenberger*, 156 Id. 201. See *State v. Packing Co.*, 124 Iowa, 323.

The delegation of power made by the Act of Aug. 2, 1886, ch. 840, is constitutionally valid; the object of the oleomargarine legislation, and also of that contained in § 3446, as amended by the Act of March 1, 1879, is not primarily the protection of purchasers, but chiefly to secure revenue by internal taxation and to prevent fraud in the collection of such revenue. *In re Kallock*, 165 U. S. 526, 537, 41 L. ed. 813; *Eagle v. Nowlin*, 94 F. R. 646. A State cannot prohibit the introduction and sale of oleomargarine in the original package. *Schollenberger v. Pennsylvania*, 171 U. S. 1, 43 L. ed. 49. Nor can a State prohibit its introduction even if colored to resemble butter and intended as a substitute for it. *In re Brundage*, 96 F. R. 963. Ignorance that the substance is oleomargarine is no excuse for violation of the law. *Hubbard v. Gilkeson*, S. T. D. (1898) 19,246. A C. O. D. sale by a manufacturer or wholesale dealer makes him liable to a tax wherever the sale becomes absolute. S. T. D. (1902) Nos. 485, 499. One who peddles oleomargarine is liable to a special tax in each place where he makes a sale. S. T. D. (1898) 20,296; Id. (1903) No. 610. A retail dealer is not required



to pay a tax as a wholesale dealer if he sells out his stock of goods to his successor in business. S. T. D. (1903) No. 730.

The following have been held not taxable as oleomargarine: A food product made of lard and beef fat but not having any ingredient to give it a butter flavor, or coloring matter to give it a butter appearance: *Braun v. Coyne*, 125 F. R. 331; "Ko-nut," composed entirely of cocoanut oil, S. T. D. (1901), No. 277; a substitute for lard, advertised as such, *Id.* (1903) No. 615. On the oath required by dealers in oleomargarine, see S. T. D. (1901) No. 2641.

While a violation of this section is not made a misdemeanor, such violations are in the nature of criminal offenses, and may be prosecuted by information or indictment. *United States v. Joyce*, 138 F. R. 455, 457. As to indictments held to be good, see *Ibid.* See further, *Collins v. New Hampshire*, 171 U. S. 30, 43 L. ed. 60; *Craft v. Schafer*, 153 F. R. 175; *United States v. Manf'g Apparatus*, 141 *Id.* 475; *United States v. Green*, 137 *Id.* 179; *Braun v. Coyne*, 125 *Id.* 331; *United States v. Ford*, 50 *Id.* 467; *In re Jordan*, 49 *Id.* 238, 240; *McAllister v. State*, 94 Md. 290; *Kollock v. United States*, 9 App. D. C. 420; *Prather v. United States*, *Id.* 82; 18 A. G. Op. 489.

Manufacturing filled cheese without payment of special tax . . . . . 6 June, 1896, s. 4; 29 Stat., 254.

Manufacturing adulterated or renovated butter without payment of special tax . 9 May, 1902, s. 4; 32 Stat. 195.

*United States v. Green*, 137 F. R. 179; *United States v. Bohl*, 125 *Id.* 625.

Officer collecting special tax for rectifying, etc., on premises less than 600 feet from distillery . . . . . R. S., s. 3244.

*Woolner v. Rennick*, 170 F. R. 662; *Williams v. United States*, 158 *Id.* 30; *Cuzner v. California Club*, 155 Cal. 303, 315.

#### *Chapter Four. — Distilled spirits.*

Adding substances to distilled spirits to create fictitious proof . . . . . R. S., s. 3252.

Evading tax on distilled spirits . . . . . R. S., s. 3256.

*Stone v. United States*, 167 U. S. 178, 184, 42 L. ed. 127; 35 Int. Rev. Rec. 189.

Distiller defrauding or attempting to defraud United States of tax . . . . . R. S., s. 3257.

This section does not repeal St. July 13, 1866, § 23, although in that Act the minimum punishment is regulated by the amount of spirits unlawfully distilled. *United States v. Cushman*, 1 Lowell, 414. An indictment under said statute, which alleges that the defendant was then and there distilling and manufacturing spirits to a large amount, to wit, to the amount and number of one thousand gallons of proof spirits, is sufficient. *United States v. Fox*, 1 Lowell, 199. An information need not set forth the particular means by which the claimant defrauded or attempted to defraud the United States of the tax or specify the particular spirits covered by the tax. *Coffey v. United States*, 116 U. S. 427, 29 L. ed. 681. See also *Coffey v. United States*, Id. 436, 29 L. ed. 684. *United States v. Staton*, 25 Int. Rev. Rec. 10, *contra*. But in *United States v. Fox*, *supra*, it was held that if the manner of paying the special tax is changed during the time the alleged illicit distilling was carried on, the indictment should aver that neither statute has been complied with. It is not necessary that the owner of premises which have been leased for distilling purposes should have knowledge that the lessee and distiller was committing a fraud on the revenue in order to warrant a forfeiture. *Dobbins's Distillery v. United States*, 96 U. S. 395, 24 L. ed. 637. The acts of a servant or agent of the claimant are to be imputed to the principal, so far as they may work the forfeiture of the property used for unlawful purposes. *Bush v. United States*, 24 F. R. 917. A person employed by one engaged in the business of distilling cannot be punished under this section. *United States v. Cooper*, 12 Int. Rev. Rec. 145, 146. When an act is committed whereby a forfeiture of a distillery is incurred, the forfeiture may be enforced as against a subsequent innocent purchaser. 16 A. G. Op. 41. "Shall forfeit" in the third line means that the property shall be subject to forfeiture whether owned by the distiller or not. *United*

States *v.* Distillery at Spring Valley, 11 Blatch. 255. Where the same section describes the offense, prescribes the civil penalty and a criminal punishment, the two latter being connected by the copulative "and," no other construction is proper than that the whole is one punishment, and that the whole cannot be satisfied by a part. *Re Leszynsky*, 16 Blatch. 9. The forfeiture is to be enforced by a civil suit *in rem* and the fine and imprisonment in a criminal proceeding. *Coffey v. United States*, *supra*; *Origet v. United States*, 125 U. S. 240, 31 L. ed. 743. See *United States v. A Distillery*, 22 Int. Rev. Rec. 195; 199 Barrels of Whiskey *v. United States*, 94 U. S. 86, 24 L. ed. 57.

An acquittal on the criminal charge bars a subsequent civil proceeding based on the same acts and facts, even though under a different section of the statutes, to enforce a forfeiture or to recover the value of the merchandise forfeited. *Coffey v. United States*, 116 U. S. 427, 436, 443, 29 L. ed. 681, 684; *United States v. Zucker*, 161 U. S. 475, 478, 40 L. ed. 777; *United States v. One Distillery*, 43 F. R. 846, 852. If the distiller is convicted under this section, he is estopped from recovering the distillery and goods forfeited, but a proceeding *in rem* is necessary to declare and perfect the forfeiture, which may be had under § 3453. *United States v. Three Copper Stills*, 47 F. R. 495.

*United States v. One Distillery*, 174 U. S. 149, 43 L. ed. 929. This section is not repealed by the Acts of March 3, 1877, ch. 114, § 1, and Oct. 18, 1888, ch. 1194, and apple brandy is a distilled spirit within its provisions. *United States v. Ridenour*, 119 F. R. 411. See further, *United States v. Spring Valley Distillery*, 8 Ben. 473; *United States v. One Hundred Barrels*, 2 Abb. U. S. 305, 1 Dillon, 49; *United States v. Stanton*, 2 Flipp. 319; *Stone v. United States*, 167 U. S. 178, 184, 42 L. ed. 127; *Mansfield v. Excelsior Co.*, 135 Id. 326, 338, 34 L. ed. 162.

Failing to register stills. . . . . R. S., s. 3258.

*United States v. Stowell*, 133 U. S. 1, 33 L. ed. 555; *United States v. Distillery*, 11 Blatch. 255; *Re Leszynsky*, 16 Id. 9, 14.

Failing to give notice of intention to carry  
on business of rectifier or distiller . . . R. S., s. 3259.

Where a distiller's bond recites that the distillery is in a given place, when, in fact, it is in another place, the sureties are not liable for the taxes in respect of the business carried on at the latter place though there is no distillery whatever at the first named place. *United States v. Boecker*, 21 Wall. 652, 22 L. ed. 472. A stockholder in a corporation engaged in the business of distilling spirits is a person "interested in the business" and is individually liable for assessments. *Kissinger v. Bean*, 7 Biss. 60. See further, note, § 3257; *Pahlman v. The Collector*, 20 Wall. 189, 22 L. ed. 342; *United States v. Hosmer*, 17 Int. Rev. Rec. 38.

A day of twenty-four hours is named to express the exact period for which the average capacity of production is to be ascertained or fixed. *Chicago Distilling Co. v. Stone*, 140 U. S. 648, 653, 35 L. ed. 532.

Distiller failing to give bond . . . . . R. S., s. 3260.  
28 May, 1880, s. 1;  
21 Stat. 145.

The requirement that the distiller shall give a bond is constitutional. *Mason v. Rollins*, 2 Biss. 99. A distiller's bond for the payment of a tax is a contract or security and not a penalty, and when given under St. July 13, 1866, is not affected by the repealing Act of Jan. 11, 1868, nor are suits or prosecutions instituted upon such suit abated. *United States v. Dutcher*, Id. 51. Such bond, conditioned faithfully to comply with all the provisions of law in relation to the business of distillers, is prospective as well as present, and embraces such provisions of law relating to the said business as may be in force during the term for which the bond is given, whether enacted before or after its execution. *United States v. Powell*, 14 Wall. 493, 20 L. ed. 726. The fact that at the time a distiller's bond was approved certain incumbrances existed upon the distillery premises does not discharge the sureties, the bond not having been delivered as an escrow. *Osborne v. United States*, 16 Int. Rev. Rec. 141, 19 Wall. 577, 22 L. ed. 208. Laches of a government official is no

defense to an action against a surety on a distiller's bond. *United States v. Hosmer*, 17 Int. Rev. Rec. 38. Neglect to file the plans and descriptions prescribed in Rev. Sts. § 3263 does not bring the distiller within the penalty of this section for failure to give the bond required by law. *United States v. 35 Barrels of Spirits*, 2 Biss. 88. It seems to have been the intention of Congress in this section to forfeit the thing offending without regard to the owner's culpability or to the interest of outside parties. *Heidritter v. Elizabeth Oil Cloth Co.*, 6 F. R. 138. The decree of forfeiture relates back to the time of the commission of the offense. *Id.* After a seizure by the United States, a State court cannot enforce a mechanic's lien against the property seized. *Id.* As to opening a judgment against a surety upon a distiller's bond, see *United States v. Millinger*, 7 F. R. 187. As to the construction of certain distillers' bonds, see *United States v. Hodson*, 10 Wall. 395, 19 L. ed. 937. See further, *United States v. Boecker*, 21 Wall. 652, 22 L. ed. 472; *United States v. Black*, 11 Blatch. 538; *United States v. Spreckens*, 1 Sawyer, 84; *Re Leszynsky*, 16 Blatch. 9, 14.

A bond given under this section binds the sureties for the payment of taxes on spirits properly deposited in a bonded warehouse and for the payment of the taxes on which the distiller has given the warehouse bond required by § 3293. *United States v. National Surety Co.*, 122 F. R. 904, reversing 112 *Id.* 336. See further, *United States v. Singer*, 15 Wall. 122, 21 L. ed. 49; *United States v. Thompson*, 45 F. R. 468; *United States v. Choteau*, 102 U. S. 603, 26 L. ed. 246; *Hart v. United States*, 95 U. S. 316, 24 L. ed. 479; 15 A. G. Op. 230.

Collector approving bond before regulations are complied with . . . . . R. S., s. 3261.

*United States v. 35 Barrels*, 2 Biss. 88.

Setting up still without permit . . . . . R. S., s. 3265.

36 Int. Rev. Rec. 360. The expression "shall pay" imposes a penalty for violation of the law. *United States v. Craft*, 43 F. R. 374. See *United States v. Reed*, 1 Lowell, 232.

**Distilling on certain prohibited premises . R. S., s. 3266.**

In an indictment drawn under that portion of the section which prohibits the use of a still, boiler, or other vessel for the purpose of distilling in any building or on premises where vinegar is manufactured or produced, it is sufficient to charge the offense in the words of the statute. *United States v. Simmons*, 96 U. S. 360, 24 L. ed. 819. But an indictment charging the defendant with causing or procuring some other person to use a still, boiler, or other vessel for the purpose of distilling must state the name of the other person or aver that the same is unknown. *Id.* As to the allegations necessary in an indictment hereunder, see *United States v. Reed*, 1 Lowell, 232. Other cases on this section are: *United States v. Flecke*, 2 Ben. 456; *United States v. Malone*, 9 F. R. 897; *United States v. Kee Ho*, 33 Id. 333; *Mason v. Rollins*, 2 Biss. 101.

**Breaking, etc., locks to cistern room, etc. R. S., s. 3268.**

*Pilcher v. United States*, 113 F. R. 248.

**Failing to keep pipes at distilleries painted  
as directed . . . . . R. S., s. 3269.**

12 A. G. Op. 523.

**Building fence exceeding five feet in height  
around distillery; refusing to furnish key  
to officer . . . . . R. S., s. 3275.**

**Obstructing revenue officer from entering  
distillery . . . . . R. S., s. 3276.  
1 March, 1879, s. 5;  
20 Stat. 335.**

**Refusing to facilitate examination by in-  
ternal revenue officer . . . . . R. S., s. 3277.  
1 March, 1879; 20  
Stat. 329.**

**Signs to be put up by distillers, rules con-  
cerning, and penalties for violation . . R. S., s. 3279.**

**Carrying grain, etc., to distillery where  
there is no sign . . . . . R. S., s. 3279.**

Working in a distillery on which no sign is placed, is an offense under this section. *United States v. Flynn*, 15 Blatch. 302. But work done in erecting a shanty in which an illicit still is placed is not

such work as is forbidden hereby. *United States v. Burgess*, 33 F. R. 833. See *Terry v. United States*, 120 Id. 483.

37 Int. Rev. Rec. 160. The penalty here declared is recoverable in a civil action. *United States v. Thompson*, 45 F. R. 468.

Failing to give bond for carrying on distillery . . . . . R. S., s. 3281.

See 3 Federal Statutes Annotated, 651-654.

Making and selling mash, wort, etc., at unauthorized distillery . . . . . R. S., s. 3282.

Manufacture of vinegar, regulations concerning and penalties for violation . . R. S., s. 3282.  
1 March, 1879, s. 5;  
20 Stat. 335.

*United States v. Prussing*, 2 Biss. 334; *United States v. Steen*, 6 Ben. 172; *United States v. Distillery*, 23 Int. Rev. Rec. 147.

Using still in forbidden hours . . . . . R. S., s. 3283.

Using material, etc., and removing spirits in absence of storekeeper . . . . . R. S., s. 3284.

Distiller refusing to draw off water and clean worm tubs . . . . . R. S., s. 3286.  
1 March, 1879, s. 5;  
20 Stat. 335.

Gauger employing distiller, etc., to use brands or perform his duties . . . . R. S., 3290.

*United States v. Bittinger*, 21 Int. Rev. Rec. 342.

Gauger making false inspection, etc. . . . R. S., s. 3292.

*Re Leszynsky*, 16 Blatch. 9; *Clay v. Swope*, 35 Int. Rev. Rec. 136.

Removing or concealing spirits contrary to law . . . . . R. S., s. 3296.

As to the necessary averments in an indictment under this section, see *United States v. Anthony*, 14 Blatch. 92; *United States v. Nunne-macher*, 7 Biss. 129. A removal of brandy made from fruit from the distillery without having cut or burned on the barrels the name of the distiller, the name of the district or serial numbers, is not illegal if all other requirements of the statute have been complied with. *United States v. 37 Barrels*, 11 Int. Rev. Rec. 125. If the principal

on a bond effects a full and complete compromise with the government of prosecutions based upon this section, the sureties on the bond cannot thereafter be subjected to the penalties therein prescribed. *United States v. Chouteau*, 20 Ct. Cl. 250, 102 U. S. 603, 26 L. ed. 246. The penalty herein prescribed is in no sense a substitute for the tax required, or an abatement of it when recovered. *Id.* As to what constitutes a justifiable removal of spirits, see *United States v. Smith*, 27 F. R. 854. If the defendant is a party in interest in the business of distilling, or a party participating in the profits of the business, and for himself or with others directed, prescribed, ordered, or set on foot the alleged removal, he may be convicted though he may not have been personally present at the time. *United States v. Nunnemacher*, 7 Biss. 111. See also *The Distilled Spirits*, 11 Wall. 356, 20 L. ed. 167; *United States v. 50 Barrels of Whiskey*, 11 Int. Rev. Rec. 94. Proceedings under § 3281, or §§ 3289, 3299, are not barred by a conviction under this section. *United States v. Three Copper Stills*, 47 F. R. 495. See § 3257. The fact that one has been acquitted on the charge of breaking a lock under § 3268 does not make evidence of tampering with that lock inadmissible on an indictment under this section. *Pilcher v. United States*, 113 F. R. 248. As to a sufficient indictment, see *Pounds v. United States*, 171 U. S. 35, 43 L. ed. 62. See further, *Stone v. United States*, 167 U. S. 178, 184, 42 L. ed. 127; *People v. Piat*, 19 N. Y. Misc. 131, 133; *United States v. Blaisdell*, 3 Ben. 132; *United States v. Harries*, 2 Bond, 311; *United States v. McKee*, 4 Dill. 128; *Re Leszynsky*, 16 Blatch. 9.

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| Transfer of spirits, etc., from one warehouse to another; rules concerning, and penalties for violation . . . . . | 3 March, 1877, s. 7;<br>19 Stat. 394. |
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| Removal of fruit brandy to special warehouse; rules concerning, and penalties for violation . . . . . | 3 March, 1877, s. 11;<br>19 Stat. 395.<br>18 Oct., 1888; 25<br>Stat. 560. |
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*United States v. Ridenour*, 119 F. R. 411. See § 3257.



Removal of distilled spirits from distillery warehouse to general bonded warehouse; rules concerning, and penalties for violation . . . . . 28 Aug., 1894, s. 59; 28 Stat. 566.

Officers of scientific institutions using alcohol withdrawn for scientific purposes for other purposes . . . . . R. S., s. 3297.  
3 May, 1878; 20 Stat. 48.

See S. T. D. (1891), p. 1457; Id. (1895), p. 499; 35 Int. Rev. Rec. 101; 36 Id. 22; 37 Id. 373. This section seems to limit the withdrawal of alcohol outside of chemical laboratories, except for the preservation of specimens of natural science, and not to permit such withdrawal by hospitals. 37 Int. Rev. Rec. 101, 311. See S. T. D. (1898) 19,664.

Removal of distilled spirits from distillery warehouse to sorghum factories; rules concerning and penalties for violation 3 March, 1891; 26 Stat. 1050.

Reusing stamps or bottles and other violations of law concerning same . . . 3 March, 1897, s. 6; 29 Stat. 627.

Forging or counterfeiting stamps . . . 3 March, 1897, s. 7; 29 Stat. 627.

Storekeeper removing, etc., packages or contents before being stamped or without permission of collector . . . . . R. S., s. 3300.

As this section prohibits goods withdrawn for exportation under it to be relanded in this country, such goods cannot be imported here again upon paying a duty equal to the original revenue tax. *Flagler v. Kidd*, 78 F. R. 341, 343; reversing 54 Id. 367.

Making false entries in books of storekeeper or distiller . . . . . R. S., s. 3305.

Distilled spirits found on the premises on which the business of distilling is carried on, being the product of such business, are not

"personal property used in the business" within the meaning of this section. *United States v. 4800 Gallons Spirits*, 4 Ben. 471. The forfeiture provided for by the Act of 1866 applied only to the apparatus, spirits, etc., in the possession of the offender at the time the act or neglect which gave the right of action occurred. *United States v. One Water Cask*, 10 Int. Rev. Rec. 93. See § 3303.

See § 3257. The brief summary of this section was probably "intended to conform substantially, in scope and effect, to the fuller definitions in § 3281 (re-enacted in § 16 of the Act of 1875), and to forfeit, without regard to the question of ownership, the distillery and distilling apparatus, and all personal property found on the premises and used in the business there carried on; but, as to real estate, to forfeit only the right, title, and interest of the distiller, and of any persons who participate in or consent to the carrying on of the distillery." Gray, J., in *United States v. Stowell*, 133 U. S. 1, 16, 33 L. ed. 555. See further, *United States v. One Distillery*, 174 U. S. 149, 43 L. ed. 929; *Dobbin's Distillery v. United States*, 96 Id. 395, 24 L. ed. 637; *United States v. Spring Valley Distillery*, 11 Blatch. 255; *Heidritter v. Elizabeth Co.*, 6 F. R. 138; *United States v. Distillery*, 6 Biss. 483; *United States v. Three Tons Coal*, Id. 379; *United States v. Mason*, Id. 350.

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| Issuing false weights . . . . .   | R. S., s. 3306.   |
| Using unregistered materials . . . . .  | R. S., s. 3306.   |
| Carrying on business of distiller after time<br>fixed in notice of suspension . . . . . | R. S., s. 3310.<br>28 May, 1880, s. 7;<br>21 Stat. 147. |

A regular suspension relieves the distiller from assessment for taxation during the suspension whether the resumption is regular or not. If the resumption is irregular, the distiller is liable to forfeiture and punishment. A non-compliance with the statute in regard to one interval of suspension cannot affect the question of the regularity of another suspension. Having mash or wort on the premises during an interval of suspension does not subject the distiller to assessment for taxation during that period. Nor does

the fact that it was impossible to lock the door of the furnace of the still, when it was at the same time impossible to make a fire in the furnace, and an officer attended meanwhile and saw that no distilling was done. Nor does the fact that notice of the suspension was not communicated by the collector to the Commissioner. *Daniels v. Tarbox*, 9 Blatch. 176. There is nothing herein which conflicts with the regulation of the Commissioner which requires the distiller to "fix his time so that he will have time to run off the mash on hand before the notice takes effect." *Stowell v. Williams*, 17 Int. Rev. Rec. 38. "Shall incur" means that he shall thereby cause or bring on the forfeitures, etc., and they are the same as under § 3281. The Distillery at Spring Valley, 11 Blatch. 255; *Clinkenbeard v. United States*, 21 Wall. 65, 22 L. ed. 477; *United States v. Reed*, 13 Int. Rev. Rec. 148. See further, *United States v. Nebraska Distilling Co.*, 80 F. R. 285; § 3259.

Breaking, etc., any lock, seal, etc., to furnace, still, etc. . . . . R. S., s. 3311.

The distiller is entitled to have the capacity estimated while the reduction is going on in such a way as not to charge him with material in mash when the change was applied for as material used in excess of capacity. *Weitzel v. Rabe*, 103 U. S. 340, 26 L. ed. 320. See *Chicago Distilling Co. v. Stone*, 140 U. S. 647, 35 L. ed. 532.

Revenue officer using, etc., stamps contrary to law . . . . . R. S., s. 3316.

*Boyd v. United States*, 14 Blatch. 317.

Carrying on business of rectifier with intent, etc., to defraud the United States . . . . . R. S., s. 3317.  
1 March, 1879, s. 5;  
20 Stat. 339.

Having in his possession a rectifying appliance to which illicit spirits had been conveyed in ale barrels, and on several occasions under suspicious circumstances poured into the receiving tub of such appliance, is sufficient to justify a jury in finding that the defendant was carrying on the business of a rectifier. The statute is intended

to cover the receipt of distilled spirits from a legal or illicit distillery. *United States v. Byrne*, 7 F. R. 455, 19 Blatch. 259, 12 Rep. 163. See *Old Nick Williams Co. v. United States*, 215 U. S. 541.

Rules concerning the keeping of books by  
rectifiers and distillers, and penalties for  
violation . . . . .

R. S., s. 3318.  
1 March, 1879, s. 5;  
20 Stat. 339.

Only wholesale dealers in domestic spirits are here referred to, and not those who buy at wholesale ale, wine, and foreign spirits, nor those who deal by retail in domestic spirits. *United States v. Reagan*, 15 Int. Rev. Rec. 8; *United States v. McCullough*, 22 Id. 202, *contra*. The principal himself is required to make the entries pursuant to this section. No provision is made for any one else making them, and the refusal or neglect to make them is to be punished without regard to the question of intent, knowledge, or willfulness. A Quantity of Distilled Spirits, 3 Ben. 552. Rev. Sts. § 3456, does not impose a forfeiture of spirits for a violation of this section, since a specific penalty is herein provided. *United States v. 1412 Gallons of Spirits*, 10 Blatch. 428; *United States v. 133 Casks of Spirits*, 1 Sawyer, 188. But if there is a willful and knowing violation, then it is held to come within § 3456. A Quantity of Distilled Spirits, *supra*. Where the defendants, who were both wholesale and retail dealers, received fifteen barrels of spirits, of six of which they made due entries in their books, but of the remaining nine made none, but proceeded to use them in their retail department, they were held liable to the penalty of \$100. *United States v. Malone*, 8 Ben. 574. Goods passing from their possession as wholesale liquor dealers into their possession as retail liquor dealers are to be regarded as being sent out of their stock and possession as wholesale dealers, and should be entered as having been sent to themselves as retail dealers. *Id.* The bonded warehouse in which a liquor dealer stores his goods is to be regarded as his premises for the purpose of suit. *United States v. McCullough*, *supra*. As to what is considered to be a removal from the stock and possession of the defendant, see *United States v. Miller*, 14 Blatch. 93. The

three punishments, penalty, fine, and imprisonment, are, in contemplation of law, only one punishment for the same offense, although the penalty of \$100 may be recovered in a civil action and the fine and imprisonment be inflicted by a criminal prosecution. And a judgment for the penalty is no bar to a criminal prosecution leading to fine and imprisonment. *Re Leszynsky*, 16 Blatch. 9. See *United States v. One Water Cask*, 10 Int. Rev. Rec. 93. See also *Williams v. United States*, 158 F. R. 30; *Brown v. Harkins*, 131 Id. 63; 38 Int. Rev. Rec. 14.

Purchasing more than twenty gallons of  
distilled spirits from person other than  
authorized rectifier . . . . . R. S., s. 3319.

See § 3244. If a rectifier purchases from an authorized distiller, who is not an authorized rectifier or an authorized wholesale dealer, distilled spirits in quantities greater than twenty gallons, which were not produced by such authorized distiller, such purchaser is liable to the penalty here imposed. *N. Y. Rectifying Co. v. United States*, 14 Blatch. 549.

Rectifier or dealer refusing to make return  
of distilled spirits received and sent out . . . . . R. S., s. 3323.  
16 July, 1892; 27  
Stat. 200.

*Williams v. United States*, 158 F. R. 30; *United States v. Seven Barrels*, 131 Id. 806; *United States v. 32 Barrels*, 5 Id. 188; *United States v. Cask of Gin*, 3 Id. 20; *Boyd v. United States*, 14 Blatch. 317; *United States v. 133 Casks*, 1 Sawyer, 188; 38 Int. Rev. Rec. 14; 12 Id. 123; 11 Id. 45.

Failing to efface and destroy stamps, etc. R. S., s. 3324.  
Transportation company carrying empty  
casks with uneffaced stamps . . . . . R. S., s. 3324.

Upon an indictment under the clauses beginning "Every person who empties or draws off" in the first line, and "or who has in his possession" in the twenty-fifth line, proof of intent is unnecessary. Under the clause beginning "And every railroad company" it is. *United*

*States v. Ulrici*, 3 Dillon, 532. The omission or neglect, however, must be knowing and willful; the obliteration must be made at the time the contents of the barrel are emptied out, and the offender must be both fined and imprisoned. *A Quantity of Distilled Spirits*, 3 Ben. 552, 3 Am. L. T. (U. S. Cts.) 10. See also § 3456. The provisions of this section are applicable to both foreign and domestic spirits, and an indictment need not specify which they are. The offense is complete whether the spirits be the product of a licensed or an illicit distillery, and whether the stamp was lawfully affixed or not. The indictment need not set out the stamp *verbatim*, or state its contents, if it describes it by its statutory designation, nor need it charge an intent to use the stamp again, or an intent to defraud the United States, or knowledge on the part of the accused that the cask contained distilled spirits. An indictment under this section will lie against two persons jointly. *United States v. Bayaud*, 21 Blatch. 287, 16 F. R. 376, 15 Rep. 520. As to evidence insufficient to sustain an indictment under this section, see *United States v. Buchanan*, 4 Hughes, 487, 9 F. R. 689. A principal who causes a package of spirits to be emptied by an employee is bound to see that the marks, stamps, or brands thereon are obliterated at the time the package is emptied. If he entrusts this duty to the employee, he does so at his peril; and if the employee fails to do his duty, such failure is equally the failure of the principal. *United States v. Adler*, 21 Int. Rev. Rec. 316, 1 N. Y. Weekly Dig. 182. A carrier is bound to know that there were unobliterated stamps upon the barrels which it transports, and it is no defense that by the exercise of reasonable care and ordinary observation it did not discover them. *United States v. Goodrich Transportation Co.*, 8 Biss. 224. St. March 1, 1879, ch. 125, § 12, does not define the offense of removing stamps from packages of imported liquors, or of having in possession stamps so removed, except by adopting the provisions of § 3324, defining such offenses in relation to stamps upon packages of domestic spirits and applying them in the case of imported liquors. In doing this its language is that of reference merely and not of definition. Having in possession a stamp once in use which has accidentally fallen off

the package, is an offense under § 3324, but not under this Act. Having in possession stamps that have been removed without, at the time of removal, being defaced and destroyed, is an offense under both laws, — one in the case of domestic, the other in the case of imported, liquors. *United States v. Spiegel*, 116 U. S. 270, 29 L. ed. 664. Said Act prohibits filling any package in which foreign spirits have been imported with domestic spirits, even though the required stamps, marks, and brands have been obliterated. *United States v. 23 Gallons of Spirits*, 5 Sawyer, 594; *United States v. Half Barrel*, 6 Id. 63. Barrels and kegs which have been emptied, and then carried to a room for the purpose of effacing the stamps and obliterating the marks, are not liable to seizure while the stamps and marks are being effaced. 11 Int. Rev. Rec. 5. See further, *United States v. Goodrich Co.*, 8 Biss. 224; *Quantity Distilled Spirits*, 3 Ben. 552; *Connor v. Lithauer*, 30 N. Y. Misc. Rep. 437.

Buying or selling empty casks having inspection marks . . . . . R. S., s. 3325.  
Changing stamps, shifting spirits . . . . R. S., s. 3326.

The addition of spirits on which no duty had been paid to a cask partly empty would be an undoubted act of fraud, punishable hereunder. *Three Packages Spirits*, 14 F. R. 569.

The words "changes or alters" cover an intentional erasure of any essential part of a mark or stamp required by law to be placed on packages of distilled spirits; an unintentional or accidental erasure of a stamp, or of some part of it, is not an offense under this section. *United States v. Bardenheier*, 49 F. R. 846, 847.

Affixing imitation stamps on packages of distilled spirits . . . . . 8 Feb., 1875, s. 17;  
18 Stat. 311.

Removing distilled spirits during unlawful hours . . . . . R. S., s. 3327.

This includes every kind of spirits which have once been distilled, no matter what other operation they may have been subjected to. *Boyd v. United States*, 14 Blatch. 317; *United States v. The Distillery at Spring Valley*, 11 Id. 255, 273.

Counterfeiting, altering, or reusing stamps  
on imitation wines . . . . . R. S., s. 3328.

An article made from grapes grown in the United States, into which carbonic acid gas is injected by a separate process of manufacture, is free from taxation. *United States v. Case*, 6 Ben. 493.

Unlawfully using wine, spirits, etc. . . . 1 Oct., 1890, s. 44;  
26 Stat. 622.

Using wine spirits which have not been  
tax paid . . . . . 1 Oct., 1890, s. 48;  
26 Stat. 623.

Fraudulently claiming drawback on dis-  
tilled spirits . . . . . R. S., s. 3330.

Relanding of distilled spirits . . . . . R. S., s. 3330.

Whiskey was bonded and gauged for export purposes in April. Later in the same year its designation was changed; it was again gauged and bonded, and sent out of the country. The difference between the two gauges was 1065 gallons, which was shown to have been caused by the intermediate leakage and evaporation. Suit was brought for the recovery of the tax on such difference. It was held that the government could recover, and that the law taxing exported whiskey was constitutional. *United States v. Thompson*, 32 Int. Rev. Rec. 166.

See § 3329. The "tax on deficiency" in the quantity of distilled spirits exported, when compared with the quantity withdrawn for exportation, may be collected by distraint upon the property of the withdrawer of spirits, as well as by suit upon the exportation bond. 16 A. G. Op. 634 (1879); but see 21 St. 59, ch. 1. The forfeiture of boats, vehicles, horses, etc., is declared irrespective of the question of ownership. *United States v. The Distillery at Spring Valley*, 11 Blatch. 255.

*Clay v. Swope*, 38 F. R. 396, 399; 17 A. G. Op. 580. Distilled spirits thus withdrawn from bond cannot, by paying the original tax under § 2500, be reimported here. *Flagler v. Kidd*, 78 F. R. 341, reversing 54 Id. 367. When spirits upon which the tax has been paid are exported, they are regauged at the port of exportation alongside of or on the vessel, and the drawback allowed is determined by the



amount of this gauge, notwithstanding a previous gauge may have shown a greater amount. The result is that the owner receives no drawback upon any deficiency occurring prior to the last regauge. Brown, J., in *Thompson v. United States*, 142 U. S. 471, 477, 35 L. ed. 1084. If the holder of distilled spirits, bonded for exportation, fails within the time specified in the bond to actually withdraw them from the distillery warehouse, the bond is forfeited; the government may then enforce the bond or proceed against the spirits *in rem*, which are then subject to distraint under the Act of May 28, 1880, ch. 108. 18 A. G. Op. 246.

Where spirits were exported under these sections with the intent to dispose of them abroad, a later importation of the same is proper. 21 A. G. Op. 501. See *The Swan Co. v. United States*, 37 Ct. Cl. 101, 109.

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| Unlawful to use or sell alcohol withdrawn<br>for denaturing, for purposes other than<br>in arts and industries . . . . . | 7 June, 1906, s. 2;<br>34 Stat. 217. |
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*Chapter Five. — Fermented liquors.*

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| Owner, etc., of brewery evading tax, etc.   | R. S., s. 3340. |
| Books of brewer; regulations concerning,<br>and penalties for violation . . . . . | R. S., s. 3340. |

In a civil action to recover the penalty for neglect to keep the books provided by law, the question of intent is immaterial. *United States v. Miller*, 16 Int. Rev. Rec. 25; *United States v. Bellingsstein*, Id. 92; *United States v. Obermeyer*, 5 Ben. 541, see § 3337. The penalties herein imposed are to be recovered in civil actions and not by indictment. *Fein v. United States*, 1 Wyo. 246. See *United States v. Foster*, 2 Biss. 453.

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| Brewer failing to affix and cancel stamps<br>on packages containing fermented<br>liquor . . . . . | R. S., s. 3342.<br>3 March, 1875; 18<br>Stat. 484. |
| Affixing fraudulent stamp . . . . .   | R. S., s. 3342.<br>3 March, 1875; 18<br>Stat. 484. |

The penalty imposed (§ 3342) may be recovered in an action of debt. Whether, after action brought, an indictment can be maintained, *quære*. *United States v. Foster*, 2 Biss. 453 Beer is not to be removed from the place of manufacture until it is stamped, and it is unnecessary for the indictment to negative all cases where the law authorizes a removal without the affixing and cancellation of a stamp. *United States v. Schimer*, 5 Biss. 195.

Selling, removing, etc., fermented liquors  
in packages without stamp, or with  
false stamp, or with twice-used stamp . R. S., s. 3343.

*United States v. Schimer*, 5 Biss. 195.

Withdrawing fermented liquor from pack-  
age without destroying or defacing  
stamp . . . . . R. S., s. 3344.

Removing lager beer from depot or ware-  
house without affixing stamp . . . . R. S., s. 3345.

Making, using, etc., false stamp, die, or  
permit . . . . . R. S., s. 3346.  
1 March, 1879, s. 5;  
20 Stat. 340.

Using stamp fraudulently . . . . . R. S., s. 3346.  
1 March, 1879, s. 5;  
20 Stat. 340.

Removing name of manufacturer on  
package . . . . . R. S., s. 3349.

Person other than owner removing stamp  
on package of fermented liquor . . . R. S., s. 3353.

Withdrawing fermented liquor from un-  
stamped package for bottling or unlaw-  
fully bottling on brewery premises . . R. S., s. 3354.  
18 June, 1896; 26  
Stat. 161.

36 Int. Rev. Rec. 222.

*Chapter Six. — Tobacco, snuff, and opium.*

Tobacco manufacturer failing to pro-  
cure or post certificate . . . . . R. S., s. 3355.  
1 March, 1879, s. 14;  
20 Stat. 344.

Tobacco or snuff manufacturer failing to  
give bond . . . . . R. S., s. 3355.  
1 March, 1879, s. 14;  
20 Stat. 344.

As to State prisons, etc., see S. T. D. (1904) No. 736. See *Franks v. Robards Tobacco Co.*, 112 F. R. 784.

Manufacturer failing to put up sign . . . R. S., s. 3356.  
Manufacturer failing to give annual inven-  
tory . . . . . R. S., s. 3358.

*United States v. Quantity of Tobacco*, 5 Ben. 112.

Books of dealers in leaf tobacco; rules con-  
cerning, and penalties for violation . . . R. S., s. 3360.  
1 March, 1879, s. 14;  
20 Stat. 345.

Where the statute prescribes a penalty by civil suit and a punishment on a criminal conviction, the two being connected by the copulative "and," the whole is one punishment and cannot be satisfied by part. *Re Leszynsky*, 16 Blatch. 9. A single sale is sufficient to constitute a dealer in leaf tobacco. The penalty can be neither more nor less than \$500. *United States v. Damiani*, 11 Int. Rev. Rec. 5.

Selling or offering for sale tobacco not put  
up in packages and stamped . . . . . R. S., s. 3363.  
1 Oct., 1890, s. 31;  
26 Stat. 619.

A retail dealer who in the course of his business sells at retail tobacco taken by him from a wooden package duly put up and stamped, whether taken at or before the sale, does not violate this section. *United States v. Veazie*, 6 F. R. 867, 11 Rep. 830. Nor does one who sells part of the package to another retail dealer who proposes to sell it again. *United States v. Jenkinson*, 15 F. R. 903. The last clause of this section contains no such exception as must be negatived in an indictment founded thereon. *United States v. Imsand*, 1 Woods, 581; 16 A. G. Op. 89. Congress has power to say that the tax on tobacco shall be paid by stamps. *United States v. Keyes*, 10 F. R. 876. See *Franks v. Robards Tobacco Co.*, 112 Id. 784.

Purchasing tobacco or snuff not branded  
or stamped . . . . . R. S., s. 3366.

United States *v.* Keyes, 10 F. R. 876. See § 3374.

Manufacturing tobacco on shares, or by  
one person for another; rules concern-  
ing, and penalties for violation . . . R. S., s. 3370.

Tobacco and snuff; rules governing the  
removal and sale of, and penalties for  
violation . . . . . R. S., s. 3372.

Franks *v.* Robards Tobacco Co., 112 F. R. 784; Henderson's To-  
bacco, 11 Wall. 652, 20 L. ed. 235; Snyder *v.* United States, 112  
U. S. 216, 28 L. ed. 697.

Removing tobacco from manufactory or  
offering for sale, etc., without stamp . R. S., s. 3374.

United States *v.* Keyes, 10 F. R. 876; Henderson's Tobacco, *supra*;  
A Quantity of Tobacco, 5 Ben. 407; United States *v.* 95 Barrels, 14  
Int. Rev. Rec. 6. See § 3372.

Affixing false stamp, etc. . . . . R. S., s. 3375.

A Quantity of Tobacco, 5 Ben. 407.

Failing to destroy stamps on empty pack-  
ages . . . . . R. S., s. 3376.

Selling packages of tobacco or snuff having  
fraudulent stamp affixed . . . . . R. S., s. 3376.

United States *v.* Loup, 1 F. R. 696, 1 McCrary, 168; A Quantity  
of Tobacco, *supra*.

Importers of cigars and tobacco failing to  
pay same tax as required of domestic  
manufacturers . . . . . R. S., s. 3377.  
1 March, 1879, s. 14;  
20 Stat. 346.

Officer of customs permitting packages of  
tobacco or snuff to pass from his hands  
before the provisions of law have been  
complied with . . . . . R. S., s. 3377.  
1 March, 1879, s. 14;  
20 Stat. 346.

36 Int. Rev. Rec. 230; S. T. D. (1894), p. 933.

Dealer in leaf tobacco failing to register . . . R. S., s. 3244, pars.  
6, 8.  
1 Oct., 1890, s. 26;  
26 Stat. 618.

*Williams v. United States*, 158 F. R. 30; *Ludloff v. United States*,  
108 U. S. 176, 27 L. ed. 693; *United States v. Nelson*, 29 F. R.  
202, 208; *United States v. Vinson*, 8 Id. 507; *United States v.*  
*McCullough*, 22 Int. Rev. Rec. 202.

Peddlers of tobacco failing to obtain and  
exhibit certificate . . . . . R. S., s. 3383.  
1 Oct., 1890, s. 29;  
26 Stat. 618.

Peddling tobacco unlawfully . . . . . R. S., s. 3384.  
1 March, 1879, s. 15;  
20 Stat. 346.

Relanding tobacco, snuff, etc., shipped for  
exportation . . . . . R. S., s. 3385.  
8 Aug., 1882; 22 Stat.  
372.

The stamps required by this section are not a tax or duty within the meaning of that clause of the Constitution which declares that "no tax or duty shall be laid on articles exported from any State." *Pace v. Burgess*, 92 U. S. 372, 23 L. ed. 657; *Turpin v. Burgess*, 117 Id. 504, 29 L. ed. 988. An excise laid on tobacco before its removal from the factory is not a duty on "exports," or on "articles exported," within the prohibition of the Constitution, though the tobacco be intended for exportation. Id. When manufactured tobacco is removed and transported from the factory in one district to an export bonded warehouse in another district, but withdrawn for consumption or sale, the tax collected is to be divided and credited equally among the collectors of the two districts. *Wilcox's Case*, 12 Ct. Cl. 495. As to this and the following section, see *United States v. Edwards*, 17 Int. Rev. Rec. 126. See also *United States v. Thompson*, 32 Int. Rev. Rec. 166; *Cornell v. Coyne*, 192 U. S. 418, 435, 48 L. ed. 504; *Fairbank v. United States*, 181 Id. 277, 281, 45 L. ed. 862; *United States v. Wilcox*, 95 Id. 661, 24 L. ed. 536; *United States v. Allen*, 39 F. R. 100.

Rules concerning tax on opium manufactured in United States, and who may engage in manufacture . . . . . 1 Oct., 1890, s. 36; 26 Stat. 621.

Rules governing the manufacture of opium 1 Oct., 1890, s. 37; 26 Stat. 620.

Rules concerning stamps to be affixed to opium imported into United States . . 1 Oct. 1890, s. 38; 26 Stat. 621.

*Chapter Seven. — Cigars.*

Manufacturing cigars without giving bond R. S., s. 3387.  
1 Oct., 1890, s. 35; 26 Stat. 620.

A pledge of unstamped cigars does not fall within the provisions of this and § 3406, and it seems that a sale of unstamped cigars will not be invalid if, as a part of the transaction, it was contemplated that they should be stamped before removal. *Combs v. Tuchelt*, 24 Minn. 423; 16 A. G. Op. 89; see § 3236. As to this and following sections, see *Ludloff v. United States*, 108 U. S. 176, 27 L. ed. 693; *Crisp v. Proud*, 4 Hughes, 57. The last sentence relating to cigarettes and cheroots applies as well to those portions of this chapter which impose penalties for a violation thereof as to those portions which relate to directions for manufacturing, packing, and stamping. *United States v. Mena*, 29 Int. Rev. Rec. 190. See *United States v. Sapinkow*, 90 F. R. 654.

Cigar manufacturer failing to display sign R. S., s. 3388.

Annual inventory; rules governing and penalties for violation . . . . . R. S., s. 3390.

*Allen v. Arguimbau*, 198 U. S. 149, 155, 49 L. ed. 990; 16 A. G. Op. 89.

Cigars; rules relating to packing, and penalties for violation . . . . . R. S., s. 3392.  
1 Oct., 1890, s. 32; 26 Stat. 619.

The proviso shows that, unless expressly excepted, Congress considered that retail dealers were within the general language of that

section, and therefore the punishment for selling or offering to sell cigars not properly boxed and stamped, is intended as well for them as for manufacturers or importers whose duty it is to pack the cigars and affix the stamps. *United States v. Edwards*, 17 Int. Rev. Rec. 126. See *Ludloff v. United States*, 108 U. S. 176, 183, 27 L. ed. 693.

*United States v. Sapinkow*, 90 F. R. 654. This does not in any way interfere with the regulation by a State of the sale or use of cigarettes. *Austin v. Tennessee*, 179 U. S. 343, 363, 45 L. ed. 214, 101 Tenn. 563. The arbitrary selection of the number of cigars to be packed in a box is legitimate. *Felsenheld v. United States*, 186 U. S. 126, 46 L. ed. 1085; *Sexton v. California*, 189 U. S. 319, 47 L. ed. 833. See further, *Crisp v. Proud*, 4 Hughes, 57.

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| Manufacturer of cigars neglecting to affix label to box . . . . .    | R. S., s. 3393.<br>1 March, 1879, s. 16;<br>20 Stat. 348. |
| Removing cigars from manufactory without properly packing . . . . .  | R. S., s. 3397.<br>1 March, 1879, s. 16;<br>20 Stat. 348. |
| Using counterfeit stamp, or making fraudulent use of stamp . . . . . | R. S., s. 3397.<br>1 March, 1879, s. 16;<br>20 Stat. 348. |

The following acts have been held to be violations of the provisions of this section: Impressing upon boxes of cigars the number of a factory other than that where the cigars were made (*United States v. 76,125 Cigars*, 18 F. R. 147; *sub nom. Jackson v. United States*, 22 Blatch. 353); affixing to a box containing domestic cigars, on which the tax has been paid, a stamp in the likeness of that required by Rev. Sts. § 2804, on a box of imported cigars (*United States v. Jacoby*, 12 Blatch. 491); removing cigars from the back part of a room where they are manufactured to the front part where they are sold, without first branding and stamping them. (*United States v. Neid*, 8 Phila. 169, 13 Int. Rev. Rec. 28.) In order to enforce a forfeiture, an infor-

mation based upon this section must, since 20 St. 348, § 16, also state the factory number. *United States v. 76,125 Cigars, supra*. An indictment under this section need not aver an intent to defraud (*United States v. Jacoby, supra*); nor, if laid in the words of the statute, aver that a stamp was required to be affixed. *United States v. Edwards*, 17 Int. Rev. Rec. 126. An averment that the defendant did buy, receive, *and* have in his possession is sufficient on proof of possession alone. *United States v. Millard*, 13 Blatch. 534. Different offenses under this section, if arising out of the same transaction, may be charged in separate counts of one indictment, though some of them are felonies and others not. *United States v. Jacoby, supra*. The penalties for selling or offering to sell cigars not properly packed and stamped are not limited in their application to manufacturers, but apply to every one. *United States v. Mena*, 29 Int. Rev. Rec. 190; *United States v. Edwards, supra*. The Commissioner cannot authorize a dealer to cut the stamps upon boxes of cigars, and permit them to be taken out, repacked, and put in the same boxes again, with a view of disposing of them without adding new stamps. *United States v. 4000 Cigars*, 25 Int. Rev. Rec. 132. See 15 A. G. Op. 516. Other cases on this section are: *Crisp v. Proud*, 4 Hughes, 57; *Hamilton Brooks Cigar Stamp*, 16 A. G. Op. 443.

17 A. G. Op. 112, 113. A private sale of goods not stamped as here required is valid, as the government does not acquire title to forfeited merchandise until it has been condemned judicially; then such title relates back to the time when the offense was committed. *Wessels v. Beeman*, 66 Mich. 343; 87 Id. 481.

This applies to cigarettes. *United States v. Sapinkow*, 90 F. R. 654. Cigars brought into this country by a passenger free of duty under the import laws may be given by him to another without subjecting either party to the penalties of this section. *Nichols v. United States*, 106 F. R. 672. See further, *Jackson v. United States*, 21 F. R. 35; *Ludloff v. United States*, 108 U. S. 176, 27 L. ed. 693.

Cigars manufactured on shares, etc., rules  
governing, and penalties for violation . R. S., s. 3399.



Forfeiture for selling cigars contrary to law,  
or for false entry, or for affixing forged  
stamp . . . . . R. S., s. 3400.

For such a state of facts as were held to constitute a violation of the provisions of this section, see *Ludloff v. United States*, 108 U. S. 176, 27 L. ed. 693. See also *United States v. Mena*, 29 Int. Rev. Rec. 190. The existence of a *bona fide* mortgage on it will not prevent property being forfeited under this section. *United States v. 246½ Pounds of Tobacco*, 103 F. R. 791. See also *United States v. Two Hundred and Thirty Patented Machines*, 99 F. R. 559.

Officer permitting imported cigars to pass  
out of his hands without compliance  
with law by the owner . . . . . R. S., s. 3402.

By this section importers of foreign cigars, besides paying the import duties upon them, are to affix to the boxes the like stamps as are required to be affixed to domestic cigars by the manufacturers; and importers are made subject to the penalties applied to the manufacturers. *United States v. Edwards*, 17 Int. Rev. Rec. 126. The collector has the right to insist, if the owner or importer will not come himself and stamp his goods, that the agent whom he sends for that purpose shall be satisfactory to the collector as well as to the importer. *Slaight v. Hedden*, 39 F. R. 103. The Treasury Department holds that the word "tax," as used in this section, includes customs duties as well as the internal-revenue tax. S. T. D. (1891), p. 908. Cigars imported from the Philippines are not "imported from a foreign country" within this section. 24 A. G. Op. 120.

Selling imported cigars not packed accord-  
ing to law . . . . . R. S., s. 3403.  
Purchasing, etc., cigars not branded or  
stamped according to law . . . . . R. S., s. 3404.  
Neglecting to destroy stamps on empty  
boxes or disposing of boxes with un-  
destroyed stamps . . . . . R. S., s. 3406.

*Combs v. Tuchelt*, 24 Minn. 423, see § 3387. As to *Hamilton Brooks Cigar Stamp*, see 16 A. G. Op. 443; 17 Id. 112.

*Chapter Eight. — Oleomargarine, adulterated butter, and filled cheese.*

Rules governing the packing and selling of  
oleomargarine, and penalties for viola-

tion . . . . . 2 Aug., 1886, s. 6;  
24 Stat. 210.

*Morris v. United States*, 168 F. R. 682, reversing 161 Id. 672; *Goll v. United States*, 166 F. R. 419; *United States v. Lockwood*, 164 Id. 772; *Hartman v. United States*, 168 Id. 30; *In re Kollock*, 165 U. S. 526, 41 L. ed. 813; *United States v. Eaton*, 144 Id. 677, 36 L. ed. 591; *Schafer v. Craft*, 144 F. R. 907; *Dougherty v. United States*, 108 Id. 56, 101 Id. 439; *United States v. Ford*, 50 Id. 467.

Manufacturer neglecting to affix label on  
package containing oleomargarine . . 2 Aug., 1886, s. 7;  
24 Stat. 210.

Officer of customs permitting packages of  
oleomargarine to pass out of his hands  
before owner's compliance with stamp  
regulations, etc. . . . . 2 Aug., 1886, s. 10;  
24 Stat. 211.

Removing, defacing, etc., stamps, etc., on  
packages of oleomargarine . . . . . 2 Aug., 1886, s. 15;  
24 Stat. 212.

*Wilkins v. United States*, 96 F. R. 837. . . .

Manufacturer of oleomargarine attempting  
to defraud United States of tax . . . . 2 Aug., 1886, s. 17;  
24 Stat. 212.

*Hardesty v. United States*, 168 F. R. 25.

Purchasing, etc., oleomargarine not  
branded, etc., according to law . . . . 2 Aug., 1886, s. 11;  
24 Stat. 211.

Purchasing, etc., oleomargarine from man-  
ufacturer who has not paid special tax . 2 Aug., 1886, s. 12;  
24 Stat. 211.

Failing to destroy stamps on empty oleo-  
margarine packages . . . . . 2 Aug., 1886, s. 13;  
24 Stat. 211.

*Vermont v. United States*, 174 F. R. 792.

Selling empty packages on which stamps  
are not destroyed . . . . . 2 Aug., 1886, s. 13;  
24 Stat. 211.

Manufacturer of oleomargarine failing to  
comply with laws . . . . . 2 Aug., 1886, s. 18;  
24 Stat. 212.

United States *v.* Eaton, 144 U. S. 677, 36 L. ed. 591.

Selling adulterated butter in other than  
original packages . . . . . 9 May, 1902, s. 4;  
32 Stat. 195.

Manufacturer neglecting to affix specified  
label on adulterated butter . . . . . 9 May, 1902, s. 4;  
32 Stat. 195.

Coopersville Creamery Co. *v.* Lemon, 163 F. R. 145.

Failing to label "Renovated" or "Process"  
butter as such . . . . . 9 May, 1902, s. 5;  
32 Stat. 197.

United States *v.* Braun, 158 F. R. 456; United States *v.* Green, 137  
Id. 179; United States *v.* Bohl, 125 Id. 625.

Wholesale dealers in oleomargarine or in  
adulterated or renovated butter failing  
to keep books . . . . . 1 Oct., 1890, s. 41;  
26 Stat. 621.  
9 May, 1902, s. 6;  
32 Stat. 197.

United States *v.* Union Supply Co., 215 U. S. 50; United States *v.*  
Lamson, 173 F. R. 673, 165 Id. 80, 162 Id. 165; United States *v.*  
Braun, 158 Id. 456.

Filled cheese, rules for packing and retail-  
ing and penalties for violation . . . . . 6 June, 1896, s. 6;  
29 Stat. 254.

Dealers in filled cheese neglecting to dis-  
play sign . . . . . 6 June, 1896, s. 7;  
29 Stat. 255.

Manufacturer of filled cheese neglecting to  
affix label . . . . . 6 June, 1896, s. 8;  
29 Stat. 255.

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| Purchasing filled cheese not branded or stamped . . . . .   | 6 June, 1896, s. 12;<br>29 Stat. 256.  |
| Purchasing filled cheese from manufacturer who has not paid special tax . . . . .   | 6 June, 1896, s. 13;<br>29 Stat. 256.  |
| Failing to destroy stamps on empty packages of filled cheese . . . . .  | 6 June, 1896, s. 14;<br>29 Stat. 256.  |
| Notices, inventories, books, to be kept by manufacturers of oleomargarine, adulterated butter, and filled cheese; rules concerning, and penalties for violation . . . . . | 2 Aug., 1886, s. 5;<br>24 Stat. 210.<br>6 June, 1896, s. 5;<br>29 Stat. 254.<br>9 May, 1902, s. 14;<br>32 Stat. 195. |

*Chapter Nine. — Mixed flour.*

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| Neglecting to brand, etc., packages of mixed flour . . . . .  | 13 June, 1898, s. 37;<br>30 Stat. 467. |
| Mixed flour; rules governing the putting up and retailing of, and penalties for violation . . . . . | 13 June, 1898, s. 38;<br>30 Stat. 468. |
| Manufacturer of mixed flour neglecting to affix label and notice . . . . .                          | 13 June, 1898, s. 39;<br>30 Stat. 468. |
| Mixed flour, rules for packing in barrels, etc., and penalties for violation . . . . .              | 13 June, 1898, s. 40;<br>30 Stat. 468. |
| Purchasing, etc., mixed flour that has not been branded, etc. . . . .                               | 13 June, 1898, s. 42;<br>30 Stat. 469. |
| Purchasing mixed flour from maker, etc., who has not paid special tax . . . . .                     | 13 June, 1898, s. 43;<br>30 Stat. 469. |
| Exporter of mixed flour subject to same provisions as maker, etc. . . . .                           | 13 June, 1898, s. 44;<br>30 Stat. 469. |
| Penalty for second offense of violation of laws concerning mixed flour . . . . .                    | 13 June, 1898, s. 48;<br>30 Stat. 470. |

*Chapter Ten. — Banks and bankers.*

Banker neglecting to make monthly return . . . . . R. S., s. 3415.

Only a single return covering deposits and capital is required to be made, and only one penalty of \$200 is imposed for all neglects or defaults prior to the commencement of the suit. The penalty is not imposed for each and every refusal or neglect, but for *any* refusal or neglect. *United States v. N. Y. Guaranty, etc. Co.*, 8 Ben. 269. See *Savings Bank v. Archbold*, 15 Blatch. 398; *United States v. Erie R. Co.*, 9 Ben. 67; 21 A. G. Op. 564; 17 Id. 540.

*Chapter Eleven. — Playing cards.*

Tax stamps on playing cards; rules governing and penalties for violation . . . 28 Aug., 1894, s. 39; 28 Stat. 560.

Manufacturer of playing cards failing to register . . . . . 28 Aug., 1894, s. 40; 28 Stat. 560.

Selling, etc., playing cards without affixing stamp . . . . . 28 Aug., 1894, s. 43; 28 Stat. 562.

Removing stamp from playing cards, or fraudulently using stamp . . . . . 28 Aug., 1894, s. 44; 28 Stat. 562.

Selling, etc., or concealing, etc., playing cards, without stamps . . . . . 28 Aug., 1894, s. 45; 28 Stat. 562.

Manufacturer of playing cards failing to pay tax . . . . . 28 Aug., 1894, s. 46; 28 Stat. 562.

*Chapter Twelve. — Provisions common to several objects of taxation.*

Distillers, etc., and manufacturers of tobacco, etc., failing to do things required, and doing things forbidden by law . . . R. S., s. 3456.

This section must be held to mean that when no punishment has elsewhere been attached to the doing or omitting of acts required or forbidden, the offense, if knowingly or willfully committed, shall be punished by the infliction of the penalty and forfeiture, provided hereby. It does not increase or cumulate punishments. *United States v. 4800 Gallons Spirits*, 4 Ben. 471; *United States v. One*

Rectifying Establishment, 11 Int. Rev. Rec. 45; *United States v. 1412 Gallons Spirits*, 10 Blatch. 428. A distiller who in good faith obtains utensils and machinery, in which defects not open to discovery by observation exist, does not render himself liable hereunder. *Felton v. United States*, 96 U. S. 699, 24 L. ed. 875. In proceedings hereunder it is unnecessary to allege or prove a criminal or fraudulent intent. *United States v. McKim*, 2 Am. L. T. (U. S. Cts.) 153, 10 Int. Rev. Rec. 74, 3 Pittsb. 155. Only such spirits as are owned by the distiller, rectifier, or wholesale liquor dealer, or in which he has an interest as owner at the time of the discovery of the offense, are subject to forfeiture for the offenses herein mentioned. *United States v. 200 Barrels Whiskey*, 2 Woods, 54, 95 U. S. 571, 24 L. ed. 491. If a rectifier knew that stamps upon empty barrels were not canceled, and it was his will freely exercised that they should not be canceled when the barrels were emptied, then he had "knowingly and willfully" neglected to comply with § 3324, and under this section all distilled spirits or liquors owned by him were forfeited. *A Quantity of Distilled Spirits*, 3 Ben. 552, 3 Am. L. T. (U. S. Cts.) 10. Violations of §§ 3318 and 3324 are punishable under this section. *Id.* But see *United States v. 1412 Gallons Spirits*, 10 Blatch. 428, and *United States v. 133 Casks Spirits*, 1 Sawyer, 188; § 3318. Regulations promulgated under and in conformity with §§ 3445, 3446, have the force of law, and a failure on the part of a vender of cigars to comply with them would render him liable under this section, even if he did not become amenable to more specific provisions. 15 A. G. Op. 191. See § 3289; *United States v. 32 Barrels Distilled Spirits*, 5 F. R. 188. "Liquors," in the tenth line, includes whatever the more special term "distilled spirits" does not embrace, and the word "or" before "liquor" does not create an alternative forfeiture of one exclusive of the other. *United States v. 133 Casks Spirits*, 1 Sawyer, 188. A druggist is not responsible as a retail liquor dealer when in good faith he sells as a medicine a medicinal preparation containing whiskey; otherwise, if the admixture is a mere disguise for the sale of such liquors. *United States v. White*, 42 F. R. 138. See *United States v. Nine Casks*,

51 Id. 191. A violation of § 3394, as amended by St. 1897, was held punishable under this section in *United States v. 288 Packages*, 103 F. R. 433. See further, 22 A. G. Op. 181; *United States v. One Distillery*, 174 U. S. 149, 43 L. ed. 929; *United States v. Three Barrels Whiskey*, 77 F. R. 963.

Inclosing lottery tickets, etc., in packages

of tobacco, etc. . . . . 24 July, 1897, s. 10;  
30 Stat. 206.

1 July, 1902, s. 2;  
32 Stat. 715.

Fraudulently claiming drawback . . . . R. S., s. 3443.

8 Feb., 1875, s. 25;  
18 Stat. 312.

Removing liquor or wines under other than

trade names . . . . . R. S., s. 3449.

This provision is constitutional, although, in some cases, the "name or brand," which must be placed upon the cask or package in order to truthfully describe the contents, happens to be a trade-mark, which may thus be incidentally protected. *United States v. Loeb*, 49 F. R. 636. "Packages" includes bottles, and the phrase "proper name or brand" does not refer to the trade-mark or make of a certain distiller, but to a removal under an improper or misleading title, as where the fraud on the government is attempted of removing brandy under the name of whiskey. *United States v. 132 Packages*, 65 F. R. 980, 76 Id. 364, 368.

Shipping a properly branded and stamped keg inside an unmarked sugar barrel does not violate this section. *United States v. Stege*, 87 F. R. 553; *United States v. Campe*, 89 Id. 697; *United States v. J. D. Iler Brewing Co.*, 121 Id. 41. This section applies only to distillers, dealers in spirits, etc. *United States v. Twenty Boxes of Corn Liquor*, 123 F. R. 135.

This section is intended to prevent frauds on the revenue, and has no application to marks or brands placed on packages by government officers. *Woolner v. Rennick*, 170 F. R. 662. This section is violated when spirituous liquors contained in bottles are packed in barrels and shipped and the barrels are marked "Groceries."

*United States v. Liquor Dealers' Co.*, 156 F. R. 219. This section does not apply to a shipment concealing the name or brands required by the regulations of the Internal Department to be put upon all vessels containing liquors. *United States v. Sandefuhr*, 145 F. R. 49. An acquittal in a criminal prosecution for causing to be transported certain casks containing bottled beer falsely marked as containing bottled soda water was held a bar to a subsequent action for forfeiture and recovery of the penalty for the same act under this section. *United States v. Seattle Brewing Co.*, 135 F. R. 597. It was held in *United States v. Twenty Boxes*, 133 F. R. 910, that the words "Glass; this side up, with care," written on a box containing bottles of whiskey, are a mere caution to the carrier, and not a false designation of the contents within this section; that this section applies to the shipment under a false brand or designation, and not to the shipment without any name or brand being placed thereon; that the section is highly penal in character and should be strictly construed, and that it applies only to shipments by distillers, brewers, manufacturers of wine, rectifiers, and wholesale dealers in spirits or fermented liquors or wines, and not to all persons generally. See *Guckenheimer v. Sellers*, 81 F. R. 997.

Removing, concealing, etc., articles with  
intent to evade United States tax . . . R. S., s. 3450.

Where a forfeiture is by statute declared absolute, it takes effect at the time of the commission of the offense, and not from the decree of condemnation. Accordingly where a removal of distilled spirits from the place where distilled, with intent to defraud the United States of the tax thereon, was alleged as a ground for the forfeiture of the spirits, it was held that neither the subsequent payment of the taxes, nor the fact that the claimant was an innocent purchaser without notice of the wrongful acts of the antecedent owner, constituted a defense to the charge. A removal of distilled spirits from the place where distilled to a bonded warehouse of the United States, if made with intent to defraud the United States of the tax, is illegal, and the spirits removed are subject to forfeiture. *Henderson's Dis-*



tilled Spirits, 14 Wall. 44, 20 L. ed. 815, reversing *United States v. 100 Barrels Spirits*, 1 Dillon, 49, 2 Abb. U. S. 305. The animals and conveyances referred to in this section are subject to forfeiture when employed in the removal of goods, etc., contrary to its provisions, though they are so employed by a person who has hired them from their owner representing that they were to be used for another purpose. *United States v. Two Bay Mules*, 36 F. R. 84; *United States v. Two Horses*, 9 Ben. 529. But a decree of condemnation entered against the spirits by default is not conclusive evidence against the owner of a truck and horses that the spirits were being removed with intent to defraud the revenue. *United States v. Two Horses*, *supra*. See also on this section, *Coffey v. United States*, 116 U. S. 436, 29 L. ed. 684. See § 3257. A mule and wagon used by a person other than their owner in the illegal removal of spirituous liquors are subject to forfeiture in a proceeding *in rem*, without regard to the personal misconduct or responsibility of the owner. *United States v. Two Bay Mules*, 36 F. R. 84. *Stone v. United States*, 167 U. S. 178, 184, 42 L. ed. 127. A team used in violation of this section without the knowledge or consent of the mortgagee thereof, who had taken proper steps to take possession thereof for condition broken, is not subject to forfeiture against him. *United States v. Two Barrels of Whiskey*, 96 F. R. 479. Forfeiture under this section, though not perfected until judicial condemnation, relates back to the time of committing the offense even against innocent intermediate purchasers. *Pilcher v. Faircloth*, 135 Ala. 311. See further, *United States v. Zucker*, 161 U. S. 475, 478, 40 L. ed. 777; *United States v. One Bay Horse*, 128 F. R. 207.

Fraudulently executing documents required by internal-revenue law . . . . R. S., s. 3451.

*United States v. One Distillery*, 174 U. S. 149, 43 L. ed. 929; *Thacher's Distilled Spirits*, 103 Id. 679, 26 L. ed. 535, 15 Blatch. 15. See § 3257. Where a suit is prosecuted for the penalty herein imposed, a verdict cannot be rendered for the alternative penalty of

\$500. To constitute fraud, an intent to evade the payment of the tax must appear to the satisfaction of the jury, and such intent can be inferred only from the facts in proof. *United States v. Grotenkemper*, 2 Bond, 140. As to the burden of proof in actions for penalties, see *Chaffee v. United States*, 18 Wall. 516, 21 L. ed. 908.

Having property in possession with intent  
to sell in fraud of law, or to evade taxes R. S., s. 3452.

A person who violates this section may be arrested without a warrant by a United States deputy marshal in whose presence the offense is committed. *Carico v. Wilmore*, 51 F. R. 196.

Selling, purchasing, etc., empty stamped  
packages . . . . . R. S., s. 3455.  
Manufacturing boxes, barrels, etc., unlaw-  
fully stamped . . . . . R. S., s. 3455.

See § 3322. Distilled spirits are subject to forfeiture if placed in a stamped and branded package which previously contained other distilled spirits on which the tax had been paid. *United States v. Nine Casks*, 51 F. R. 191. In *United States v. Three Packages*, 152 F. R. 580, an information for a forfeiture of distilled spirits for violation of §§ 3289, 3455, was held bad on demurrer as not sufficiently definite. As to "other spirits of a different quality" and as to inadmissible evidence, see *Three Packages v. United States*, 129 F. R. 329, 125 Id. 52.

Forging or counterfeiting stamps, dies, or  
plates; using forged or counterfeited  
stamps, dies, or plates; cutting, tearing,  
etc., impression of stamp, die, or plate,  
or fraudulently using same; having  
stamps, dies, or plates in possession un-  
lawfully . . . . . R. S., s. 3429.  
1 March, 1879, s. 17.  
20 Stat. 349.  
28 Aug., 1894, s. 42;  
28 Stat. 561.  
13 June, 1898, s. 8;  
30 Stat. 452.

## TITLE XXVIII

## NATIONAL BANKS

*Chapter One. — Organization and powers.*

Using word "National" as part of corporate name without authority . . . . . R. S., s. 5243.

A State bank does not violate this law by using, as part of its name, the word "international." 22 A. G. Op. 475. Nor is this provision violated by using the word "national" in the corporate name of a building and loan association. *Lomb v. Pioneer S. & L. Co.*, 106 Ala. 591, 671. See 20 A. G. Op. 673.

*Chapter Two. — Circulating notes.*

Issuing circulating notes to unauthorized association . . . . . R. S., s. 5187.

*Chapter Three. — Regulation of the banking business.*

Holding United States notes as collateral R. S., s. 5207.  
Falsely certifying checks . . . . . 12 July, 1882, s. 13;  
22 Stat. 166.

It was held in *United States v. Heinze*, 161 F. R. 425, that § 5208 of U. S. Rev. Sts. does not create any criminal offense, but that it should be read with § 13 of the Act of 12 July, 1882, and that the two create one offense, viz., the certification of a check when the drawer has not sufficient money to cover it, or before the amount shall have been regularly entered. "The wrongful intent is the essence of the crime. If an officer certifies a check with the intent that the drawer shall obtain so much money out of the bank when he has none there, such officer not only certifies unlawfully, but the specific intent to violate the statute may be imputed. And so evil design may be presumed if the officer purposely keeps himself in ignorance of whether the drawer has money in the bank or not, or is grossly indifferent to his duty in respect to the ascertainment of that fact." *Spurr v. United States*, 174 U. S. 728, 735, 43 L. ed. 1150. In *Potter v. United States*, 155 U. S. 438, 447, 39 L. ed. 214, testimony was offered tending to show an agreement of the officers of the bank to treat the overdraft as a loan, drawing interest, and secured by

collateral, and that such agreement was carried into effect by the deposit of the collateral and the casting up of interest. The Court said, "If the defendant in good faith supposed that this arrangement was the equivalent of a loan by note, and that the indebtedness of Evans & Co. (the drawers of the check) was fully secured by collateral, it seems to us the jury would have a right to be informed of the fact as bearing upon the question whether he had 'willfully' violated the statute." Evidence that the cashier, upon whom the president in certifying a check was alleged to have relied, was to the knowledge of the president engaged in stock speculations, and had used the bank's funds for his own purposes without the knowledge of the directors, was held admissible to show the defendant's intent in certifying the check. *Spurr v. United States*, 87 F. R. 701. In *Union Trust Co. v. Preston Nat. Bank*, 136 Mich. 460, it was held that a certified check is valid in the hands of a *bona fide* holder for value, although the maker had no funds in the bank when it was certified. A violation of this section does not preclude the bank from enforcing collaterals pledged to secure the debt arising on the certification. *Thompson v. St. Nicholas Nat. Bank*, 146 U. S. 240, 36 L. ed. 956, 113 N. Y. 325. Many points as to indictments are found in *United States v. Heinze*, 161 F. R. 425. "The word 'certify,' as applied to bank checks and as used in the statutes under consideration, has become a term of art, and the court is bound to take judicial notice of its meaning. When it is alleged that one 'certified' a check, that word implies that certain words have been written or printed upon said check, and that the check passed from the custody of the bank into the hands of some other party, and that thereby the person certifying created an obligation of the bank." *United States v. Heinze*, *supra*, p. 427. If an indictment against a national bank officer charges him personally with illegally certifying certain checks, it is necessary, in order to sustain such charge, to prove that the individuals who actually executed the certification indorsement were but the physical instruments of the defendant and acted in accordance with his orders. *United States v. Heinze*, *supra*. "An overdraft may be legal, or it

may be criminal, according to the intent of the person committing it, as inferable from the surrounding circumstances shown in proof." *Ibid.*, p. 428. This section does not invalidate an oral acceptance of, or promise to pay a check, there being at the time sufficient funds of the drawer in possession to meet it. *First Nat. Bank v. Merchants' Nat. Bank*, 7 W. Va. 544.

This provision affirms the validity of the contract of certification, and as it expressly provides what consequences shall follow upon its violation, it clearly implies that no other consequences are so to follow. *Thompson v. St. Nicholas Nat. Bank*, 146 U. S. 240, 247, 36 L. ed. 956. In an indictment under this section, as amended by § 13 of the Act of 1882, it is not necessary to allege that the bank delivered the check after certifying it. *United States v. Potter*, 56 F. R. 83, 97, 155 U. S. 438, 39 L. ed. 214. See further, *Rankin v. Bush*, 102 N. Y. App. Div. 510, 93 Id. 181; *McCreery R. Corp. v. Equitable Nat. Bank*, 54 N. Y. Misc. Rep. 508, 534; *Wright v. Merchants' Bank*, 3 Cent. L. J. 351; 17 A. G. Op. 472; *Buffalo Ins. Co. v. Third Nat. Bank*, 29 N. Y. App. Div. 137, 146.

Embezzlement, etc. . . . . R. S., s. 5209.

*United States v. Farrington*, 5 F. R. 343; *Ex parte Hitz*, 111 U. S. 766, 28 L. ed. 592; *Ex parte Bain*, 121 Id. 1, 30 L. ed. 849; *Whittemore v. Amoskeag Nat. Bank*, 134 U. S. 527, 33 L. ed. 1002; *In re Claasen*, 140 Id. 200, 205, 35 L. ed. 409; *Claasen v. United States*, 142 Id. 140, 35 L. ed. 966; *Evans v. United States*, 153 Id. 584, 587, 595, 38 L. ed. 830; *Hunt v. United States*, 166 Id. 424, 41 L. ed. 1063; *Wright v. Henkel*, 190 U. S. 40, 58, 47 L. ed. 948; *United States v. Martin*, 4 Cliff. 156; *Porter v. United States*, 91 F. R. 494; *Hanover Nat. Bank v. First Nat. Bank*, 109 Id. 421. The president does not violate this provision by procuring the discount of a note insufficiently secured, although he applies the money to his own use; nor is he criminally liable for permitting a depositor who has not paid his indebtedness to the bank to withdraw his deposit. *United States v. Britton*, 108 U. S. 193, 27 L. ed. 701. If an officer of a national bank permits a firm of which he is a member

to overdraw its account with intent to defraud, he is punishable criminally under this section. *United States v. Fish*, 24 F. R. 585. "This statute is highly penal, and should therefore receive a strict construction." *United States v. Ege*, 49 F. R. 852. The word "moneys" includes all money, and is not confined to money usually denominated "lawful money." *United States v. Johnson*, 4 Cinc. L. Bul. 361. "The word 'money' refers to the currency or circulating medium of the country; the word 'funds' refers to government, state, county, municipal, or other bonds, and to other forms of obligations and securities in which investments may be made; and the word 'credits' refers to notes and bills payable to the bank, and to other forms of direct promises to pay money to it." *United States v. Smith*, 152 F. R. 542, 544. This section punishes the embezzlement of the property of national banks, but not of the property of individuals deposited with, and in the custody of, such banks. *Commonwealth v. Tenney*, 97 Mass. 50. If a bank, through its governing board or its exchange committee, consents to the fraudulent acts of its officer before or at the time they were done, such officer cannot be punished; if they did not so consent, it is no defense that they afterwards learned of the transaction. *United States v. Youtsey*, 91 F. R. 864; *Rieger v. United States*, 107 Id. 916. This applies to agents in liquidation appointed by the stockholders. *United States v. Jewett*, 84 F. R. 142. The misapplication of the bank's assets by its president, who is appointed to close its affairs in liquidation, with authority to collect its credits, is within this section, for he is an "agent" as well as an official trustee for creditors. *Jewett v. United States*, 100 F. R. 832, 838. It is no defense that the money was subsequently refunded. *United States v. Morse*, 161 F. R. 429. A conviction under this section does not disqualify a witness in a criminal case. *United States v. Sims*, 161 F. R. 1008. As to questions of evidence and instructions, see *Goll v. United States*, 151 F. R. 412; *May v. United States*, 157 Id. 1; *Clement v. United States*, 149 Id. 305; *Lear v. United States*, 147 Id. 349.

"*Embezzles.*" This word appears to mean, whenever used to distinguish a crime which a person has the opportunity to commit

by reason of some office or employment, some breach of confidence or trust, or some misuse of an opportunity. *United States v. Conant*, 9 Cent. L. J. 129; *United States v. Harper*, 33 F. R. 471. Embezzlement is a species of larceny, and is applicable to the stealing of property by clerks, agents, servants, and parties acting in fiduciary capacities. In order to constitute this crime it is necessary that the property embezzled should come lawfully into the hands of the party embezzling, and by virtue of the position of trust he occupies. *United States v. Lee*, 12 F. R. 816.

If the president of a bank, charged as a trustee with the administration of the funds of the bank, converts them to his own use, he embezzles and abstracts them, unless he shows authority for so doing. *Re Van Campen*, 2 Ben. 419.

In order to constitute embezzlement there must be an actual and lawful possession or custody of the property of another by virtue of some trust, duty, agency, or employment, committed to the party charged; and while so lawfully in the possession and custody of such property, the person must unlawfully and wrongfully convert the same to his own use. It is not necessary that the accused should have been in the exclusive possession or custody at the time of the conversion to his own use. If it appears that the business and assets of the bank were actually or practically intrusted to the care and management of the defendant, so that by virtue of his position as vice-president, director, or agent, he had not merely access to, or a constructive holding of, but such actual custody of the funds, moneys, and credits of the association as enabled him to have and exercise control over the same, that would place him in the lawful possession thereof. If his position and employment gave the defendant a superior or a joint and concurrent possession with subordinate employees or agents of the bank, his possession would be lawful. *United States v. Harper*, 33 F. R. 471, 475.

*"Abstracts."* This word as used in this section is not a word of settled technical meaning like "embezzle." It is a word of simple, popular meaning, without ambiguity. It means to take or withdraw from, so that to abstract the funds of the bank, or a portion of them,

is to take and withdraw from the possession and control of the bank the moneys and funds alleged to be so abstracted. To constitute the offense within the meaning of this statute, it is necessary that the moneys and funds should be abstracted from the bank without its knowledge and consent, with the intent to injure or defraud it or some other company or person, or to deceive some officer of the association, or an agent appointed to examine its affairs. *United States v. Northway*, 120 U. S. 327, 30 L. ed. 664. The offense of abstraction is committed where one, for his own benefit, takes the property of another. It is not necessary that any position of trust should exist between the parties, or that the property should come lawfully into the possession of the party who abstracts it. *United States v. Lee*, 12 F. R. 816. To constitute the offense of abstracting the funds of a bank it must appear that the defendant had official relations with it; that he took or withdrew, or directed the taking or withdrawal, of its moneys, funds, credits, or assets; that this was done without the knowledge or consent of the bank or of its board of directors; that the money or effects so taken and withdrawn were converted to the defendant's own use, or for the benefit and advantage of some person other than the association, and that this was done with intent to injure and defraud the association. No previous lawful possession is necessary in order to the commission of this offense and it is not material by what means, contrivances, or devices the abstraction of the funds of the bank is effected and accomplished. *United States v. Harper*, 33 F. R. 471, 479. See *United States v. Youtsey*, 91 F. R. 864, 867; *Dorsey v. United States*, 101 Id. 746; *Batchelor v. United States*, 156 U. S. 426, 429, 39 L. ed. 478.

*"Willfully misapplies."* "Willfully" means designedly. It is not necessary that the party who misapplies should derive any benefit from the transaction. This is made clear by the use of the word "injure," in connection with the word "defraud." *United States v. Lee*, 12 F. R. 816; *United States v. Taintor*, 11 Blatch. 374. If the evidence shows that funds have been misapplied, the defendant cannot say that it was not done with guilty intent. *Id. Contra*,



*United States v. Voorhees*, 9 F. R. 143. So far as the question of guilt or innocence under this section is concerned, there is no distinction between a loan in bad faith for the purpose of defrauding the bank, and an application of money with like intent in a form other than that of a loan. A loan of the moneys of a bank by its president in bad faith for the purpose of defrauding the bank, is no loan in the sense of the law. *United States v. Fish*, 24 F. R. 585, 589. If the president of a bank gives false credits to a firm of which he is a member, and causes the checks drawn by such firm against such credits to be paid, the entries being made by him with the understanding that they were to be drawn against, he is guilty of a misapplication of the funds of the bank. *Id.* See *Coffin v. United States*, 156 U. S. 432, 39 L. ed. 481.

The statute does not use the words "embezzles" and "willfully misapplies" as synonymous. In order to misapply the funds of the bank, it is not necessary that the officer charged should be in actual possession of them by virtue of a trust committed to him. He may abstract them from the other funds of the bank unlawfully, and afterwards criminally misapply them, or by virtue of his official relation to the bank, he may have such control, direction, and power of management as to direct an application of the funds in such a manner and under such circumstances as to constitute the offense of willful misapplication. *United States v. Northway*, 120 U. S. 327, 30 L. ed. 664; *United States v. Harper*, 33 F. R. 471, 477; *United States v. Fish*, 24 Id. 585, 589. See *Walsh v. United States*, 174 Id. 615.

The willful misapplication made an offense by this section means a misapplication for the use, benefit, or gain of the party charged, or of some company or person other than the association. To constitute the offense, there must be a conversion to his own use, or the use of some one else, of the moneys and funds of the association by the party charged. *United States v. Britton*, 107 U. S. 655, 108 Id. 193, 27 L. ed. 703; *Winchester v. Howard*, 136 Cal. 432, 453; *United States v. Steinman*, 172 F. R. 913; *United States v. Morse*, 161 Id. 429; *United States v. Harper*, 33 Id. 471, 477. See *Graves v. United States*, 165 U. S. 323, 41 L. ed. 732.

A director violates this clause if, knowing that he has no money to his credit in the bank, and no right to draw money therefrom, he obtains money from it to which he has no right by means of his overdraft made with intent to defraud, and converts the same to his own use in fraud of the bank. *United States v. Warner*, 26 F. R. 616. But see *United States v. Potter*, 56 Id. 97, 155 U. S. 438, 39 L. ed. 214. Abstraction and misapplication are a conversion to his own use by an officer, when the funds are not especially intrusted to his care. *Dow v. United States*, 82 F. R. 904; *United States v. Youtsey*, 91 Id. 864. "To complete the misapplication of the funds of a bank it is necessary that the fund should be withdrawn from the possession or control of the bank, or a conversion thereof in some form should occur, so that the bank loses the same." *United States v. Martin-dale*, 146 F. R. 280, 282. Giving a fraudulent credit, and permitting it to be transferred as genuine on the bank's books, amounts to a criminal misapplication of money or funds. *Rieger v. United States*, 107 F. R. 916, 930.

As to an unintentional overdraft or one to be paid pursuant to a prior agreement resting on abundant credit, see *United States v. Steinman*, 172 F. R. 913. In this case, which was a prosecution for aiding and abetting the officers of a national bank willfully to abstract the funds by means of overdrafts, evidence that before the overdrafts were made it was agreed that the bank should furnish funds for the business of certain corporations in which the accused and the bank's president and cashier were officers, and that from time to time notes should be given by such corporations to take up the overdrafts, and that at the time of the advances the value of the corporation's property was more than \$300,000, while the overdrafts aggregated only \$30,872.24, was held admissible to show absence of criminal intent; and an instruction that an arrangement by which the cashier and president allowed its funds to be taken out was not a justification, since they could only be taken out by the board of directors, and that if by the paying of the checks constituting the overdrafts, or any of them, either the money of the bank was removed from its resources, or its capital reduced, or its

charter endangered, any one of such things would be sufficient to warrant the jury in finding a misapplication with intent to injure the bank, was held erroneous.

Where a customer's note is about to mature and he delivers a check to the bank to pay it, and the cashier cashes it and converts the proceeds, the loss is that of the bank and the defendant's offense a willful misapplication and not a mere breach of trust. *Geiger v. United States*, 162 F. R. 844. Evidence that the cashier overdrew his account, by checks not charged to it, but carried in the drawer as cash and afterwards taken up by his note, without the knowledge or consent of the board, is sufficient to warrant conviction. *Brock v. United States*, 149 F. R. 173.

*"False entry."* If the president directs a clerk employed in the bank to make false entries in its books, he is a principal in the offense, and the entries are, in law, made by him. *Re Van Campen*, 2 Ben. 419; *United States v. Harper*, 33 F. R. 471, 480; *Agnew v. United States*, 165 U. S. 36, 41 L. ed. 624; *United States v. Youtsey*, 91 F. R. 864; *Scott v. United States*, 130 Id. 429.

If the false entry is calculated to deceive, the making of it in the books of the association, with intent to deceive, is all that is necessary to bring the act within the meaning of the statute. The fact that its falsity may be exposed by an examination of other books of account does not render it any the less a false entry made with intent to deceive. The statute is not designed to punish only those officers who make false entries with intent to deceive examiners appointed before the false entries were made. *United States v. Britton*, 107 U. S. 655, 27 L. ed. 520; *United States v. Harper*, 33 F. R. 471, 480. The words "any false entry in any book, report, or statement," are sufficiently comprehensive to forbid a falsification of the books of a national bank in any manner, whether by an original false entry or by changing by erasure a correct entry already made. In either event it is necessary to write in the books, — to make an entry of some sort, — and if the words or figures so written falsify the fact or transaction intended to be authenticated, the act is necessarily within the prohibition of the statute. *United States v.*

Crecilius, 34 F. R. 30. An entry by the cashier as a "cash item," of a check which actually entered into a transaction of the bank is not a "false entry," although he knew the check to be worthless, since the statement is true. *United States v. Young*, 128 F. R. 111. As to the meaning of "entry," see *United States v. Morse*, 161 F. R. 429, 174 Id. 539.

An understanding between certain depositors and a bank officer, that certain money was only to be used by the bank for the purpose of being shown to the examiner as bank funds, is within this section, and an entry of such sums as deposits is a false entry. *Peters v. United States*, 94 F. R. 127, 145. A voluntary false report of the condition of a bank, made to the comptroller by an officer of the bank, is within this section, even though it is not made in compliance with the request or call of the comptroller. *Bacon v. United States*, 97 F. R. 35; *United States v. Booker*, 80 Id. 376; *United States v. Hughitt*, 45 Id. 47. But see *United States v. French*, 57 Id. 382; *United States v. Potter*, 56 Id. 83, 97, 155 U. S. 438, 39 L. ed. 214; *Cochran v. United States*, 157 U. S. 286, 39 L. ed. 704.

When a call is made upon a bank for a statement of overdrafts, the report should include overdrafts covered by "overdraft notes," unless discounted, and the proceeds thereof actually carried to the credit of the depositor on the books of the bank. *Bacon v. United States*, 97 F. R. 35.

Entries made at the direction of a cashier are the same as if he made them in person. *Peters v. United States*, 94 F. R. 127, 145. Evidence that a bank officer signed and verified reports containing false entries, will not justify his conviction, if it appears that such entries were not made by him or by his direction. *United States v. Booker*, 98 F. R. 291.

But an officer who verifies a report made up by a clerk is responsible for the statements contained in it, and cannot be heard to plead ignorance of them. *United States v. Allen*, 10 Biss. 90. This section includes a false entry in a report made to the Comptroller of the Currency. *United States v. French*, 57 F. R. 382; *Same v. Hughitt*,

45 Id. 47. But it is not an ingredient of the offense of making a false entry in a report of a national bank under this section that the report should be one which it is the legal duty of the bank to make. *United States v. Booker*, 80 F. R. 376, 379; explaining *United States v. Potter*, 56 Id. 83, 97 (see s. c. 155 U. S. 438, 39 L. ed. 214). See *Dow v. United States*, 82 F. R. 904; *Breese v. United States*, 106 Id. 680. This statute includes a false entry made by an assistant cashier. *Cochran v. United States*, 157 U. S. 286, 289, 39 L. ed. 704; *Agnew v. United States*, 165 Id. 36, 41 L. ed. 624. The offense of aiding and abetting may be committed by those who are not officers or agents of the bank. *Coffin v. United States*, 156 U. S. 432, 162 Id. 664, 40 L. ed. 1109.

Entries which correctly record actual transactions of the bank, although they may have been unauthorized, or even fraudulent, are not false entries. *Twining v. United States*, 141 F. R. 41. "Although the report is made to the Comptroller, yet if the intent in making a false entry is to deceive an examiner who, every officer of a bank knows, may be appointed to make an examination for the information of the Comptroller, it is sufficient by itself to constitute an offense, irrespective of the existence of any of the other intents disjunctively mentioned in the Act." *Clement v. United States*, 149 F. R. 305, 316.

The entry of a note as paid, when it was only indorsed by the bank and rediscounted, is a false entry. *Dorsey v. United States*, 101 F. R. 746. So the entry as money deposited of a sack containing money to be returned, this being done merely to make a showing of money to a bank examiner. *United States v. Peters*, 87 F. R. 984. So the entry of a slip upon the books of the bank, if the matter contained in the deposit slip is not true. *Agnew v. United States*, 165 U. S. 36, 41 L. ed. 624. "Certainly, if an overdraft is made and allowed under circumstances justifying it, it cannot be said that the entry on the books of the bank of the checks constituting the overdraft is a false entry; and, on the other hand, if an overdraft is in fact made and allowed, under circumstances which make the transaction a fraud upon the bank, the entry of the transaction

just as it occurred is not a false entry." *Dow v. United States*, 82 F. R. 904, 910; *United States v. Young*, 128 F. R. 111.

This section includes a report voluntarily made as well as one required by law, if the false entry was made with the requisite unlawful intent. *Harper v. United States*, 170 F. R. 385, 7 Ind. T. 437. As to the inclusion of a note in a report made by the cashier of a bank to the Comptroller of the Currency as a loan and discount of the bank not constituting the making of a false entry, see *Hayes v. United States*, 169 F. R. 101. As to the inclusion of a note given to the bank by an irresponsible person, see *Id.* Where witnesses were allowed to testify as to the defendant's reputation for truthfulness and honesty, it was held not error to exclude testimony as to his reputation for morality and sobriety. In this case it was also held that instructions considered and taken together were not erroneous. *Harper v. United States*, *supra*. See further as to false entries, *Scott v. United States*, 130 F. R. 429; *United States v. Allis*, 73 Id. 165; *United States v. Corbett*, 215 U. S. 233.

*"With intent to injure or defraud."* This term means nothing more than that general intent to injure or defraud, which always arises in contemplation of law when one willfully or intentionally does that which is illegal or fraudulent; and which, in its necessary or natural consequence, must injure another. The intent may be shown, or may be conclusively presumed from the doing of the wrongful, fraudulent, and illegal acts. The intent specified is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed. *United States v. Harper*, 33 F. R. 471, 481. The intent to defraud is to be inferred from the fact of embezzlement. *Re Van Campen*, 2 Ben. 419. The words "with intent, in either case, to injure or defraud" apply to embezzlement as well as to making false entries. *United States v. Voorhees*, 9 F. R. 143, 12 Repr. 713. On the trial of the cashier of a national bank indicted under this section, the defendant offered evidence to prove that his taking moneys and funds of the bank, and using them in stock speculations carried on in his own name, by depositing them with a stockbroker as margins, were known to the president and some of the directors

of the bank, and were sanctioned by them; and that such dealings of his with the funds of the bank were intended for the account and benefit of the bank, and were believed by him to have been sanctioned by the president and some of the directors, though there was no resolution of the board of directors authorizing or sanctioning them, such evidence being offered to disprove the averment in the indictment that the acts were done with "intent to injure and defraud" the bank. Held, that such evidence must be excluded. *United States v. Taintor*, 11 Blatch. 374. The phrase "intent to injure or defraud" is the same as that used in indictments for forgery. There it refers to a general guilty intent, and such indictments are held conclusively proved when the act is proved to have been knowingly committed. The phrase has the same meaning in this statute, and the intent is to be proved in the same way. *United States v. Taintor*, 11 Blatch. 374, 378.

The honest exercise of official discretion, in good faith without fraud, for the advantage or supposed advantage of the association, is not punishable; but if official action be taken, not in the honest exercise of discretion, in bad faith for personal advantage and with fraudulent intent, it is punishable. *United States v. Fish*, 24 F. R. 585, 588.

Any of the intents here set forth are sufficient, and the several intents may be cumulatively charged in the indictment. See *McKnight v. United States*, 97 F. R. 209, 111 Id. 735, 736; *United States v. German*, 115 Id. 987. See *United States v. Berry*, 85 F. R. 208, 96 Id. 846; *State v. Nicholls*, 50 La. An. 699. The "intent" does not necessarily involve malice or ill-will towards a bank; it is sufficient if the unlawful intent, if carried into execution, will necessarily or naturally injure or defraud. *United States v. Kenney*, 90 F. R. 257, 267; *Agnew v. United States*, 165 U. S. 36, 41 L. ed. 624. Whether or not a person had that intent may be inferred from the attending acts, circumstances, and surroundings. *Id.*; *United States v. German*, 115 F. R. 987. It is not a crime for a cashier to discount bad paper, or accept for collateral worthless securities, unless an intent to defraud the bank appears affirmatively. *United*

*States v. Youtsey*, 91 F. R. 864, 870. See *Cochran v. United States*, 157 U. S. 286, 294, 39 L. ed. 704; *McKnight v. United States*, 97 F. R. 208; *United States v. Allis*, 73 Id. 165.

The *intent* is material and must be alleged, but intent to deceive one of the bank officers is sufficient. *Cochran v. United States*, 157 U. S. 286, 294, 39 L. ed. 704; *United States v. Means*, 42 F. R. 599. The offense is not established by showing unintentional or clerical errors or mistakes not intended to deceive: *United States v. Allen*, 47 F. R. 696, 10 Biss. 90; *United States v. Graves*, 53 F. R. 634, 165 U. S. 323, 41 L. ed. 732; or acts performed at the request of the bank examiner. *United States v. Ege*, 49 F. R. 852.

The offense of making false entries contrary to this provision does not give an exclusive jurisdiction to the Federal courts so as to preclude an indictment in the State court for forgery. *Cross v. North Carolina*, 132 U. S. 131, 137, 33 L. ed. 287; *In re Loney*, 134 U. S. 372, 375, 33 L. ed. 949; see *New York v. Eno*, 155 U. S. 89, 99, 39 L. ed. 80; *United States v. Buskey*, 38 F. R. 99; *In re Eno*, 54 Id. 669; *State v. Tuller*, 34 Conn. 280; *Hoke v. People*, 122 Ill. 511; *Commonwealth v. Barry*, 116 Mass. 1; *People v. Fonda*, 62 Mich. 401; *Commonwealth v. Ketner*, 92 Pa. St. 372; *Commonwealth v. Luberg*, 94 Id. 85. A State statute making it a criminal offense for an officer of a bank to receive deposits knowing that the bank is insolvent, applies to officers of national banks. *State v. Easton*, 113 Iowa, 516; *State v. Bardwell*, 72 Miss. 535; *State v. Fields*, 98 Iowa, 748. *Contra*, *State v. Menke*, 56 Kan. 77.

The Federal offense, as an infamous crime, cannot be prosecuted by information. *Folsom v. United States*, 160 U. S. 121, 123, 40 L. ed. 363; *United States v. Smith*, 40 F. R. 755. If begun in one State and completed in another, the Federal court in the latter has jurisdiction of its trial. *Putnam v. United States*, 162 U. S. 687, 40 L. ed. 1118.

As "misapplication" includes embezzlement, and is a misdemeanor, a defendant is only entitled to three peremptory challenges to the jury. *Jewett v. United States*, 100 F. R. 832, 840; *Tyler v. United States*, 106 Id. 137.



*Indictment.* The different offenses named in this section may be joined in one indictment, if in separate counts. *United States v. Cadwallader*, 59 F. R. 677. The crimes named by this section are infamous, and must be prosecuted by indictment. *United States v. De Walt*, 128 U. S. 393, 32 L. ed. 485; *United States v. Hade*, 10 Chi. Leg. News, 22.

An indictment for embezzlement under this section is fatally defective unless it alleges that it was done with intent to injure or defraud. *United States v. Conant*, 9 Cent. L. J. 129; *United States v. Britton*, 107 U. S. 655, 27 L. ed. 520. An indictment alleged that the president of a bank misapplied \$25,000 of its money "by causing the said sum of \$25,000 to be credited to G. & W. on the books of the bank," etc. A credit of \$105,000 was shown by a single entry, \$25,000 of which the jury found was a misapplication. Held, an immaterial variance. *United States v. Fish*, 24 F. R. 585. Charging the defendant with committing the acts alleged against him in his capacity as "president and agent" does not vitiate the counts in which he is so described. *United States v. Northway*, 120 U. S. 327, 30 L. ed. 664. A count charging embezzlement is good if it alleges that the moneys and funds alleged to have been embezzled were at the time in the possession of the defendant as president and agent, and were converted to his own use. This necessarily means that they had come into his possession in his official character, so that he held them in trust for the use and benefit of the association. *Id.*

An indictment against persons as aiders and abettors of the director of a bank in misapplying the funds thereof is not good unless it alleges facts which show a misapplication of the funds of the bank by the director. *United States v. Warner*, 26 F. R. 616.

An indictment which alleges the making of a false entry with intent to deceive the Comptroller of the Currency, is bad, he not being an agent appointed to examine the affairs of national banks. *United States v. Bartow*, 10 F. R. 874.

An allegation that the defendant made a false report of the condition of the bank may support a finding that he made a false entry in

a report, the indictment containing the words "whereby, by means of a false entry therein by him made." *Id.*

In alleging the willful misapplication of the funds of a bank by its president and agent, it is not necessary to say that the funds charged to have been misapplied had previously come into the defendant's possession as president and agent (*United States v. Northway*, 120 U. S. 327, 30 L. ed. 664); nor in charging a president with aiding and abetting F., the cashier of the bank, with the misapplication of its funds, to allege that the defendant then and there knew that said F. was such cashier. *Id.*

The words "willfully misapplies" have not, like the word "embezzles," a settled technical meaning, and must, therefore, be supplemented by further averments showing how the misappropriation was made, and that it was unlawful. *Batchelor v. United States*, 156 U. S. 426, 429, 39 L. ed. 478; *Graves v. United States*, 165 U. S. 323, 41 L. ed. 732; *Agnew v. United States*, *Id.* 36, 41 L. ed. 624. The property taken must be clearly specified, "funds" being too indefinite. *United States v. Greve*, 65 F. R. 488; see *United States v. Jewett*, 84 *Id.* 142.

An indictment following this section, charging that the accused was an officer; that, with intent to deceive, he made at a stated time and place a false entry on the books of the bank, which it describes, is sufficient, though it does not aver that the entry was made in the bank's due course of business and in one of its accounts, nor that interest was due from the person named in the entry, nor that an examining agent had then been appointed. *United States v. Britton*, 107 U. S. 655, 27 L. ed. 520. The death of the principal before indictment is not an obstacle to the prosecution and punishment of one charged with aiding and abetting. *Gallot v. United States*, 87 F. R. 446. Where an officer is charged with several offenses in making at different times false entries, the offenses may be charged in different counts of one indictment. *United States v. Berry*, 96 F. R. 842. If the offense is well described in any language, it seems sufficient; otherwise, if not well described, although the words of the statute are used. If the substance is there, the form is made

immaterial by § 1024. *United States v. McClure*, 107 F. R. 268. An averment in an indictment that certain money is lawful, legal-tender money of the United States, is surplusage, and need not be proved. *Porter v. United States*, 91 F. R. 494. Upon an indictment charging an officer with the willful misapplication of certain money, etc., by using the same to discount the unsecured note of a person known to be insolvent, such note is not the subject-matter of the offense and need not be set out *in haec verba*. *Rieger v. United States*, 107 F. R. 916, 920.

An indictment charging the defendant as cashier with having made a false entry in a report with intent to deceive an officer of the association, need not describe the report with technical accuracy, and an averment of the date when made, and that it was a report made to the Comptroller of the Currency showing the resources and liabilities of the bank on a certain date, is sufficient to authorize the presumption that it was a report made by the association under § 5211. *Harper v. United States*, 170 F. R. 385. An indictment charging officers of a national bank with making a false entry in a report made by them "with intent to deceive an agent appointed to examine the affairs of the association, to wit, the Comptroller of the Currency of the United States," does not charge an offense under this section; and a general averment that a false entry charged to have been made by them in a report to the comptroller was made "with intent to injure and defraud the association" is also insufficient. *United States v. Corbett*, 162 F. R. 687. As to various points as to indictments, see *United States v. Breese*, 173 F. R. 402, 172 Id. 761, 765, 131 Id. 915; *Geiger v. United States*, 162 F. R. 844; *United States v. Morse*, 161 Id. 429, 164 Id. 1023, 168 Id. 49, 169 Id. 1021, 174 Id. 539; *Harvey v. United States*, 159 Id. 419; *United States v. Smith*, 152 Id. 542; *Clement v. United States*, 149 Id. 305; *United States v. Martindale*, 146 Id. 280, 289; *United States v. Eastman*, 132 Id. 551; *Scott v. United States*, 130 Id. 429.

A charge under § 5440 of conspiracy between officers of a national bank to embezzle, etc., its funds in violation of § 5209 is supported by evidence that, acting together with a common understanding,

the defendants largely overdrew their respective accounts with the bank, to such an extent that they were wholly unable to meet the same, as they must have known, and that, to cover up such overdrafts, by a common understanding, they placed worthless notes in the bank with the intent and result of injuring and defrauding the bank and impairing its capital. *United States v. Breese*, 173 F. R. 402, 131 Id. 915. See further, *United States v. Dickinson*, 213 U. S. 92, 95, 53 L. ed. 711; *Ex parte Bain*, 121 Id. 2, 30 L. ed. 850; *Westbrook v. New York Assoc.*, 58 N. Y. App. Div. 562; *Morse v. United States*, 174 F. R. 539.

Failing to make report of dividends . . . R. S., s. 5213.

Failing to make half-yearly return of  
circulation . . . . . R. S., s. 5215.

*Jackson v. United States*, 20 Ct. Cl. 298; 20 A. G. Op. 695, 704;  
17 Id. 540; 16 Id. 173.

## TITLE XXIX

### THE PUBLIC MONEYS

#### *Chapter One. — Custody.*

Assistant treasurers accepting commis-  
sions or other perquisites . . . . . R. S., s. 3597.

Clerk acting as assistant treasurer sub-  
ject to same penalties . . . . . R. S., s. 3613.

Withholding moneys due the United States R. S., s. 3619.

*United States v. Ellsworth*, 101 U. S. 170, 25 L. ed. 862.

## TITLE XXX

### THE PUBLIC DEBT

Counterfeiting, etc., certificates of indebt-  
edness . . . . . 13 June, 1898, s. 32;  
30 Stat. 466.

## TITLE XXXI

### DEBTS AND CLAIMS

#### *Chapter One. — Collection and payment.*

Making false claim against Government . R. S., s. 3490.

The power given by § 3469 to the Secretary of the Treasury to compromise "any claim in favor of the United States" enables the Secretary to remit a forfeiture after judgment, though in suits brought under §§ 3490-3493 the prosecutor is liable for costs. 18 A. G. Op. 72. Such suit is essentially criminal; the defendant may show good character, and the government case must be proved beyond a reasonable doubt. *United States v. Shapleigh*, 54 F. R. 126; *United States v. Griswold*, 24 Id. 361. A paymaster's clerk in the army or in the navy is a person "in the military or naval forces of the United States." *United States v. Bogart*, 3 Ben. 257. The word "person" is restricted to individuals. *United States v. Kansas Pac. R. Co.*, 4 Cent. L. J. 174.

## TITLE XXXII

### PUBLIC CONTRACTS

Officer making contract failing to make  
return thereof . . . . . R. S., s. 3746.

*P. H. McLaughlin v. United States*, 37 Ct. Cl. 150; *St. Louis Hay Co. v. United States*, Id. 281.

Employees of United States having interest  
in Indian contracts, etc. . . . . 22 June, 1874, s. 10;  
18 Stat. 177.

## TITLE XXXIV

### THE PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE

#### *Chapter Two. — Sanitation and quarantine.*

Vessel from foreign port entering port in  
violation of quarantine law . . . . . 15 Feb., 1893, s. 1;  
27 Stat. 449.

Vessel from foreign port to secure bill of  
health before sailing . . . . . 15 Feb., 1893, s. 2;  
27 Stat. 450.

"The port of departure" is not the last port at which the vessel stops while bound for the United States, but the port from which she cleared. *The Dago*, 61 F. R. 986.

- Vessel or person entering within limits of quarantine grounds or stations or departing therefrom without permission . 19 June, 1906, s. 4; 34 Stat. 300.
- Owner or master of vessel violating rule regulating inspection of vessels or making false statement as to sanitary condition of vessel . . . . . 19 June, 1906, s. 4; 34 Stat. 300.
- Person trespassing on quarantine reservation or vessel entering in violation of quarantine . . . . . 1 Aug., 1888 25 Stat. 355.
- Violating regulation for suppressing contagious diseases . . . . . 27 March, 1890, s. 1; 26 Stat. 31.
- Wong Wai *v.* Williamson, 103 F. R. 1, 384.
- Quarantine officer or person employed in service violating regulation for preventing spread of contagious diseases . . . 27 March, 1890, s. 2; 26 Stat. 31.
- Common carrier or officer or agent thereof violating quarantine law or regulation . 27 March, 1890, s. 3; 26 Stat. 32.

## TITLE XXXVII

## FOREIGN RELATIONS

- Violating safe-conduct or assaulting public minister . . . . . R. S., s. 4062.
- Osborn *v.* United States Bank, 9 Wheat. 738, 6 L. ed. 204; United States *v.* Rhodes, 1 Abb. U. S. 32; United States *v.* Hand, 2 Wash. C. C. 435; United States *v.* Lafontaine, 4 Cranch C. C. 173; United States *v.* Jeffers, Id. 704. Consuls are not entitled, by the law of nations, to the immunities and privileges of public ministers; they are only exempt from the jurisdiction of State courts. Gittings *v.* Crawford, Taney, 1; Commonwealth *v.* Kosloff, 2 Wheeler C. C. 622; St. Luke's Hospital *v.* Barclay, 3 Blatch. 265; United States *v.* Ravara, 2 Dall. 297, 1 L. ed. 388; Graham *v.* Stucken, 4 Blatch. 50; Bixby *v.* Jansen, 6 Id. 315; *Re* Dillon, 7 Sawyer, 561; Miller *v.*

Von Loben Sels, 66 Cal. 341. State courts may, however, take jurisdiction of suits by foreign consuls. *Sagory v. Wissman*, 2 Ben. 240. These provisions are equally obligatory on the State and Federal courts. *Ex parte Cabrera*, 1 Wash. C. C. 232. A certificate from the Department of State, under seal of office, showing that a person is recognized as a foreign minister, is sufficient evidence that he has been received as such by the President. This section applies to all public ministers. *United States v. Benner, Baldw.* 234. If the minister first assaults, the defendant is excused for returning it. *United States v. Liddle*, 1 Wash. C. C. 205; *United States v. Ortega*, 4 Id. 531, 11 Wheat. 467, 6 L. ed. 521. An assault by a foreign minister may be repelled in self-defense, but it does not justify an arrest on process. *United States v. Benner, supra*. An indictment against the servant of a foreign minister must be quashed for want of jurisdiction. *United States v. Lafontaine*, 4 Cranch C. C. 173. But a domestic servant of a public minister, committed under a warrant from the governor, or any judicial magistrate of a State, cannot be discharged by an order of a Federal court, the proper tribunal to declare the arrest void being the one in which the process is pending. *Ex parte Cabrera*, 1 Wash. C. C. 232. A foreign minister cannot waive his privileges or immunities, and an attaché to a foreign legation is a public minister within the act. *United States v. Benner, Baldw.* 234; *Davis v. Packard*, 7 Pet. 276, 8 L. ed. 684.

*In re Baiz*, 135 U. S. 403, 419, 34 L. ed. 222; *Hollander v. Baiz*, 41 F. R. 732; 19 A. G. Op. 16. A writ of execution issued against the person or goods of a foreign minister is a "suing out" within § 4064; the penalty therefor should be sued for by the United States attorney of the proper district. 17 A. G. Op. 563.

Suing out writ or process, etc., against public minister . . . . . R. S., s. 4064.

Whoever executes a process on a foreign minister, under this section, is to be deemed an officer, and it is not necessary to support an indictment that the defendant should know the person arrested

to be a foreign minister. *United States v. Benner*, Baldw. 234. See 17 A. G. Op. 563.

Failing to appear or refusing to testify in  
suit pending in foreign country . . . R. S., s. 4073.

24 A. G. Op. 69.

Issuing false passport, etc. . . . . R. S., s. 4078.  
14 June, 1902, s. 3;  
32 Stat. 386.

17 A. G. Op. 674.

Murder, and insurrection against certain  
countries . . . . . R. S., s. 4102.

## TITLE XXXVIII

### INDIANS

#### *Chapter One. — Officers and agencies.*

Indian agent making false entry in books,  
etc. . . . . 3 March, 1875, s. 10;  
18 Stat. 451.

Employees in Indian affairs trading with  
Indians . . . . . R. S., s. 2078.

#### *Chapter Two. — Performance of treaty obligations.*

Receiving money from Indians under  
prohibited contracts . . . . . R. S., s. 2105.

#### *Chapter Three. — Government and protection.*

Sending seditious message to Indians . . R. S., s. 2111.

Carrying seditious message to Indians . . R. S., s. 2112.

Corresponding with foreign nations to in-  
cite Indians to war . . . . . R. S., s. 2113.

*In re Lelah-Puc-Ka-Chee*, 98 F. R. 429.

Attempting to negotiate treaty with In-  
dians without authority . . . . . R. S., s. 2116.

The penalty does not apply to the inducing or negotiating of a  
lease for grazing purposes. *United States v. Hunter*, 21 F. R. 615.

Driving stock to feed on Indian lands . . R. S., s. 2117.



One who without consent of Indians drives cattle upon his own or government land near Indian lands, so that they may and naturally will go upon Indian lands, intending to have them, is within this section if his stock actually goes upon Indian lands, but not if it merely strays there. 16 A. G. Op. 569. A grazing lease is authorized by this section. *United States v. Hunter*, 4 Mackey, 531. "Cattle" in this section includes sheep. See 18 A. G. Op. 91. *United States v. Mattock*, 2 Sawyer, 148. The penalty prescribed may be recovered when cattle are driven and permitted to graze on the lands of any Indian or Indian tribe for a single day, no license having been obtained; and a person who is prohibited by natural obstructions from using a fixed and known trail across such lands, and makes a trail of his own from some point where he chose to enter them, without license, even to the nearest accessible point on the established trail, incurs the penalty. *United States v. Loving*, 34 F. R. 715. The words "drives or otherwise conveys" imply the active agency of some person in getting the cattle upon the reservation. 16 A. G. Op. 568.

The driving of cattle into Indian country to be delivered to one of its citizens under his contract for their purchase does not violate this provision. *Morris v. Cohn*, 55 Ark. 401. See further, *Morris v. Hitchcock*, 21 App. D. C. 565, 590; *Land Co. v. Thompson*, 57 Kans. 792, 796; *Forsythe v. United States*, 3 Ind. Ter. 599.

14 A. G. Op. 568. This section applies only to lands of Indians in some state of pupilage, where the control of the United States over private rights in land has existed, and is not extinguished. *United States v. Joseph*, 94 U. S. 614, 24 L. ed. 295. Going upon Indian land under a grazing lease and surveying and making boundaries thereunder is not within this section. *United States v. Hunter*, *supra*. An ordinary lease of such land is void. *Uhlig v. Garrison*, 2 Dak. 71. One who endeavors to oust an Indian from Indian lands is a trespasser, and an Indian having standing in court can maintain the action. *Fellows v. Blacksmith* (19 How. 366, 15 L. ed. 684); or a State may remove the trespasser. *New York v. Dibble*, 21 How. 366, 16 L. ed. 149. A State has no right to

prescribe by law terms upon which persons may locate upon lands belonging to the Cherokee nation, because the whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the government of the United States. *Worcester v. Georgia*, 6 Pet. 515, 8 L. ed. 483. Lands allotted to the Cherokee Indians cannot be granted by a State. *Lattimer v. Poteet*, 14 Pet. 4, 10 L. ed. 328. Lands reserved to Indians under a treaty, which vests in them the title, but which restricts them from conveying it without first obtaining the consent of the President of the United States, descend under the laws of the State, and are liable for the payment of debts. *Lowry v. Weaver*, 4 McLean, 82.

While the Indians remain under their elementary and rude tribal relations, they are not held competent to receive or execute grants of land. See *Libby v. Clark*, 118 U. S. 250, 30 L. ed. 133; *Pickering v. Lomax*, 145 Id. 310, 36 L. ed. 706; *Smythe v. Henry*, 41 F. R. 705; *Briggs v. Sample*, 43 Id. 102; *United States v. Partello*, 48 Id. 670; *Ross v. Eells*, 56 Id. 855; *Taylor v. Bacon*, 5 Dak. 335; 20 A. G. Op. 246. But when they are located by Congress upon a reservation without providing that they shall not be subject to Territorial or State jurisdiction, and the reservation afterwards in fact becomes subject to such jurisdiction, and its members take allotments, they become liable to county taxation as to their personal property. *Keokuk v. Ulam*, 4 Okl. 5; see *United States v. Thomas*, 151 U. S. 577, 38 L. ed. 276; 47 F. R. 488; *Board of Commissioners v. Simons*, 129 Ind. 193. An Indian reservation, if sold by the United States partly on credit, is subject to State taxation from the time of the sale. *Edgington v. Cook*, 32 Neb. 551. Lands in the Indian country, not within any Indian reservation, and held by no title except the original occupancy of the Indians, may be settled by whites. *Caldwell v. Robinson*, 59 F. R. 653. Upon the limitation of five years upon the Indians' right to alienate homesteads under the Act of March 3, 1875, § 15, see *Taylor v. Brown*, 147 U. S. 640, 37 L. ed. 313. When Indians no longer have a tribal organization, and the statutes direct a division, by the head of the annuities and other sums payable, the identification of each claimant is prop-

erly left to the officers who are the agents of the government in paying out the fund. *United States v. Old Settlers*, 148 U. S. 427, 37 L. ed. 509; *Phineas Pam-Po-Pee v. United States*, Id. 691, 705, 37 L. ed. 613, 27 Ct. Cl. 403.

Under this section and §§ 2147, 2149, the Commissioner of Indian Affairs and his subordinate, the Indian agent, have full discretion to remove from the Indian reservation any person not of the tribe of Indians entitled to remain thereon, and no court can interfere with the exercise of such discretion by mandamus or injunction. 20 A. G. Op. 245, 247. See further, *Robinson v. Caldwell*, 67 F. R. 391; *Buchanan v. Drovers' Bank*, 55 Id. 223, 225; *United States v. Payne*, 22 Id. 426; *Pike v. Hunter*, 4 Mackey, D. C. 531; *Morris v. Hitchcock*, 21 App. D. C. 565, 590.

*Chapter Four. — Government of Indian countries.*

Purchasing cattle of Indians without consent of agent . . . . . 4 July, 1884; 23 Stat. 94.

Residing in Indian country as trader without a license . . . . . R. S., s. 2133.  
31 July, 1882; 22 Stat. 179.

Scienter or intent is immaterial under this section. *United States v. Leathers*, 6 Sawyer, 17; *United States v. Sturgeon*, Id. 29. Nor can a trader relieve himself of a like provision by adoption into an Indian tribe. 2 A. G. Op. 402. Section 2133 does not extend to lands held by the United States for sale, not constituting an Indian reservation, although Indians reside thereon. *United States v. 48 Pounds of Tea*, 35 F. R. 403.

The Act of March 3, 1885, in taking away tribal jurisdiction over certain crimes committed by one Indian against another, in subjecting tribal Indians to Territorial jurisdiction for crimes committed within a Territory, whether on or off a reservation, and in limiting Federal jurisdiction to the same offenses when committed on a reservation if within a State, was intended to leave the Indian, tribal or otherwise, amenable to State jurisdiction for offenses committed

outside the reservation. *Pablo v. People*, 23 Col. 134. As Indian lands which were not within any State when the Act of 1834 was passed are now new States, and new Indian country has since been added to the national domain, the definition of that statute has been abrogated, but still applies to lands then embraced in the description there given. *Benson v. United States*, 44 F. R. 178; *United States v. Rising Star Tea*, 38 Id. 400, 35 Id. 403; *In re Jackson*, 40 Id. 372; 19 A. G. Op. 477, 482. The President can, it seems, make a reservation for Indian occupation from public domain lying within State limits. 17 A. G. Op. 258. The common law *prima facie* prevails in suits in the Federal courts in the Indian Territory. *Pyeatt v. Powell*, 51 F. R. 551; *Arkansas City Bank v. Swift*, 57 Kans. 460. As to the jurisdiction and judgments of such courts, see *In re Mayfield*, 141 U. S. 107, 114, 35 L. ed. 635; *Westmoreland v. United States*, 155 U. S. 545, 39 L. ed. 255; *Crabtree v. Madden*, 54 F. R. 426; *Crabtree v. Byrne*, Id. 432; *Mehlin v. Ice*, 56 Id. 12; *In re Bonner*, 57 Id. 184; *Standley v. Roberts*, 59 Id. 836. See also 20 A. G. Op. 215.

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| Foreigner going into Indian country without passport . . . . . | R. S., s. 2134. |
| Purchasing certain prohibited articles from Indians . . . . .  | R. S., s. 2135. |
| Hunting on Indian lands . . . . .                              | R. S., s. 2137. |

The establishment of fisheries upon an Indian reservation is contrary to law. *United States v. Sturgeon*, 6 Sawyer, 29. As to property seized by the military under this section, see 18 A. G. Op. 555.

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|---|------------------------------|
| Removing cattle, etc., from Indian country        | R. S., s. 2138.              |
| Selling intoxicating liquors to Indians . . . . . | R. S., s. 2139.              |
|   | 30 Jan., 1897; 29 Stat. 506. |

Alaska is in the Indian country so far as the laws regulating the sale of liquors are concerned. 14 A. G. Op. 327; *In re Carr*, 3 Sawyer, 316. All reservations west of the Mississippi River which are occupied by Indian tribes, and also all other districts which are so occupied, to which the Indian title has not been extinguished, are

Indian country, and remain (to a greater or less extent, as they lie within a State or Territory) subject to the provisions of this section. 16 A. G. Op. 290; *United States v. Le Bris*, 121 U. S. 278, 30 L. ed. 946; *United States v. Martin*, 8 Sawyer, 473. Each member of the tribe is to be regarded as under the charge of the Indian agent having charge of the tribe. *United States v. Earl*, 9 Sawyer, 79. The War Department has discretionary power over the introduction of spirituous liquors or wines into Alaska, and may permit such articles to be taken there, whether they are or are not intended for the use of officers or troops in the service of the United States. 14 A. G. Op. 327, 401; 16 Id. 290.

*In re Mills*, 135 U. S. 263, 34 L. ed. 107; *Ex parte Mayfield*, 141 U. S. 107, 114, 35 L. ed. 635; *Ex parte Friday*, 43 F. R. 916; *Benson v. United States*, 44 Id. 178; *In re Bond*, 49 Id. 48; *State v. Frazier*, 28 Neb. 438. Beer is not a spirituous liquor under this statute, and in general where the term "liquor" is used in a specific sense, spirituous and distilled beverages are intended, as distinguished from fermented ones. *Sarlls v. United States*, 152 U. S. 570, 574, 38 L. ed. 556. This section includes a sale outside the Indian country to an Indian under the charge of an Indian agent. *Clark v. Bates*, 1 Dak. 42. A Territorial legislature may also restrict the sale of intoxicating liquors to Indians under Rev. Sts. § 1851. *Territory v. Guyott*, 9 Mont. 46.

The Act of Congress of Feb. 8, 1887 (24 St. 390), by which Indians adopting the habits of civilized life may become citizens, is constitutional. *State v. Norris*, 37 Neb. 299. It does not give them such rights or immunities as to invalidate a State law making it a felony to sell or furnish intoxicating liquors to any Indian. *People v. Bray*, 105 Cal. 344. This section, prior to its amendment, did not apply to lager beer. *Sarlls v. United States*, 152 U. S. 570, 38 L. ed. 556. *Anheuser-Busch B. Ass'n v. Bond*, 66 F. R. 653; *In re McDonough*, 49 Id. 360; *United States v. Ellis*, 51 Id. 808. Transportation of such liquors through Indian country does not introduce it into Indian country. *United States v. 29 Gallons of Whiskey*, 45 F. R. 847. This section applies to an Indian in the

United States army, or to one who lives on allotted land and is an elector in a State, their tribes being under an agent. *United States v. Hurshman*, 53 F. R. 542; *Renfrow v. United States*, 3 Okl. 161.

Under its power to regulate commerce with the Indian tribes (Const. Art. 1, § 8), Congress had authority to pass the Act of Jan. 30, 1897 (29 St. 506), which prohibits and punishes the sale of spirituous liquors to any Indian to whom an allotment of lands had been made while the government held the title thereto in trust for the Indian. *Farrell v. United States*, 110 F. R. 942. See *Mulligan v. United States*, 120 Id. 98. This section applies not only to white men who sell or give away liquor but to Indians also, and it is no defense that the Indian recipient was off the reservation when he received the liquor; neither is wrongful intent necessary to make one guilty under the statute. *United States v. Miller*, 105 F. R. 944. Where an Act of Congress makes mineral lands in an Indian reservation subject to entry under the Federal laws, a valid location of a mineral claim thereunder segregates such claim from the reservation, and extinguishes the Indian title thereto, so that the land embraced therein ceases to be "Indian country," and this section does not apply to such lands. A stock of liquor is not liable to seizure by being transported across an Indian reservation to a place where the owner may lawfully dispose of it. *United States v. Four Bottles Sour-mash Whiskey*, 90 F. R. 720. See *United States v. Kopp*, 110 Id. 160. *Ex parte Dick*, 141 Id. 5. See further, *United States v. Sutton*, 215 U. S. 291, 165 F. R. 253; *United States v. Hall*, 171 F. R. 214; *United States v. Boss*, 160 Id. 132; *In re Chavez*, 72 F. R. 1006; *United States v. Chung Sing*, 4 Ariz. 217; *United States v. Buckles*, 6 Ind. Ter. 319; *Parris v. United States*, 1 Id. 43; *United States v. Winslow*, 3 Sawyer, 337; *United States v. Osborn*, 2 F. R. 58.

Operating a distillery in Indian country. R. S., s. 2141.

The offense under § 2139 is not limited to acts done within the Indian country. *United States v. Holliday*, 3 Wall. 407, 18 L. ed.

182; *United States v. 43 Gallons of Whiskey*, 93 U. S. 188, 23 L. ed. 846; *United States v. Osborne*, 6 Sawyer, 406; *United States v. Earl*, 17 F. R. 78; *United States v. Flynn*, 1 Dillon, 451; *United States v. Tom*, 1 Oregon, 26; *United States v. Burdick*, 1 Dak. 142. St. March 30, 1802, described what was to be considered as the Indian country at that time, and also what it should be subsequently, as purchases might be made from time to time by the United States from the Indians. Carrying spirituous liquors into a Territory so purchased, even though it should be at the time exclusively inhabited by Indians, would not be an offense within the meaning of the provisions of the Act so as to subject the goods of the trader, found in company with these liquors, to seizure and forfeiture. *American Fur Co. v. United States*, 2 Pet. 358, 7 L. ed. 450. The United States Supreme Court follows the decision of the political departments of the government as to whether or not any particular class of Indians is still to be regarded as a tribe, or the tribal relation has ceased. *United States v. Holliday*, *supra*. A State has no power, either by constitutional or legislative enactment, to withdraw the Indians within its limits from the operation of the laws of Congress regulating trade with them; notwithstanding it may confer citizenship or the right of suffrage on such Indians. *Id.*; *United States v. Shaw-Mux*, 2 Sawyer, 364. Section 2140 is constitutional. *United States v. 43 Gallons of Whiskey*, *supra*. An internal-revenue license relieves from penalties imposed for want of one, and does not justify violations of law which do not depend on the want of one. *United States v. 43 Gallons of Whiskey*, 108 U. S. 491, 27 L. ed. 803. Officers can only seize under § 2140 within Indian country, outside whereof such acts make them *tortfeasors*. *Bates v. Clark*, 95 U. S. 204, 27 L. ed. 471. The scienter or intent is immaterial. *United States v. Osborne*, *United States v. Earl*, and *United States v. Flynn*, *supra*; *United States v. Leathers*, 6 Sawyer, 17. An Indian once in charge of the Indian bureau is within this section unless discharged by the United States. *United States v. Earl*, *supra*. Nor does notice that a superintendency is to be discontinued relieve an Indian from

superintendence before the discontinuance is actual. *United States v. Wirt*, 3 Sawyer, 161. The bounds of a reservation are not controlled by monuments set by government officers without authority. *United States v. Leathers*, *supra*. An Indian, not within the exception, is liable under this section. *United States v. Shaw-Mux*, 2 Sawyer, 364. An order to ship, which is only an offer to buy, is not an attempt to commit the offense prohibited by § 2140. *United States v. Stephen*, 12 F. R. 53. The act herein prohibited may be a crime by local law as well, and so constitute two offenses, and be liable to two penalties. *Oregon v. Coleman*, 1 Oregon, 191. The team and harness by which the prohibited conveyance is effected are liable to seizure, but the justification of seizure must show that the conveyance was by white men or Indians. *Webb v. Nickerson*, 11 Oregon, 382. Spirits merely in transit through Indian country are not within § 2140. *United States v. Carr*, 2 Mont. 234. See further, 22 A. G. Op. 232.

Assaulting an Indian or other person . . . R. S., s. 2142.

*Ex parte Brown*, 40 F. R. 81; *United States v. Williams*, 2 Id. 61; *Jennings v. United States*, 2 Ind. Ter. 670; *Williams v. United States*, 1 Id. 560.

Arson in Indian country . . . . . R. S., s. 2143.

Forgery and mail depredations in Indian country . . . . . R. S., s. 2144.

Returning to Indian country after removal R. S., s. 2148.

It has been held that the penalty does not make the statute criminal. *In re Seagraves*, 4 Okl. 422; *United States v. Payne*, 22 F. R. 426; *United States v. Baker*, 4 Ind. Ter. 544. But see *United States v. Stocking*, 87 F. R. 857. See also *United States v. Sturgeon*, 6 Sawyer, 29.

## TITLE XXXIX

### PATENTS

Falsely marking, etc., articles as patented R. S., s. 4901.

This statute, being penal, must be strictly construed, and does not apply where the article to which the word "patent" was affixed was



not patentable, because its manufacture imported no novelty, nor the exercise of any inventive talent. *United States v. Morris*, 2 Bond, 23. *Contra*, *Oliphant v. Salem Mills Co.*, 5 Sawyer, 128. There is no liability unless the person who marked the unpatented article did so with knowledge that he had no right to do it, and with the purpose of deceiving the public. It is for the jury to find as to the intent. *Walker v. Hauxhurst*, 5 Blatch. 494. The statute is designed to guard the right of the public to use unpatented articles. To constitute the offense, it must be found that the word "patent" was affixed, that the article was not patented, and that the intent in marking it was to deceive the public. The words "Newell's patent, 1852," is within the law. The article need not be sold, to constitute the offense. If the prohibited word is attached to articles without any intent to use them or to deceive, the purpose is innocent. One who has instructed his workman to mark articles with the word "patent," intending to deceive, is not relieved from liability because he subsequently changes his mind without countermanding his order. *Nichols v. Newell*, 1 Fisher, 647. Where an article was stamped with the mark of two different patents, obtained by different patentees, one of whom had consented that defendant might affix his mark thereto, and the other patentee had not given such consent, the case was held not within subdivision three, which applies only to unpatented articles. *French v. Foley*, 11 F. R. 801. If the patents marked on the article issued have all expired, and there is no patent in force upon it or any part of it, there is no offense. *Wilson v. Singer Manuf. Co.*, 12 F. R. 57, 9 Biss. 173. The offense created by this subdivision is that of stamping. Taking the articles stamped into another district with intent to sell them is not prohibited, and cannot be construed as a repetition or continuance of the act of stamping in the district in which they are removed. *Pentlarge v. Kirby*, 19 F. R. 501. If the superintendent of a corporation knew, or should have known, that the articles he stamped were not patented, the corporation is liable for his act in stamping them. But if he honestly believe they were patented, it is not liable. *Tompkins v. Butterfield*, 25 F. R. 556. It need not be alleged or proved that the articles falsely

stamped were patentable. If they were not, and the public would not be deceived by the marking, the defendant may show the facts. *Winne v. Snow*, 19 F. R. 507. Subdivision two of this section does not include the case of a patented article stamped with the mark of one who has no patent which includes or affects the article stamped, but who has a patent for a different article. The language cannot be added to by inserting after the words "the patentee" the words "of the same or any other similar article." *French v. Foley*, 11 F. R. 801. It is not required that the pleading allege that the stamping was done on a designated day. An allegation that it was done "in or about June, 1886," is sufficient on demurrer, if it is good according to the practice of the State in which the action was brought. *Fish v. Manning*, 31 F. R. 340. It must be alleged that the defendant had no patent; that the stamped article contained the patented improvement, and that the stamping was done without the consent of the plaintiff's assigns or representatives. *Id.* Suits to recover the penalty must be brought in the name of the informer. *United States v. Morris*, 2 Bond, 23. Where a suit was brought in the name of the informer for his own benefit and that of the United States, the latter was not considered a party, and a demurrer for misjoinder of parties was overruled. *Winne v. Snow*, 19 F. R. 507. Suit may be brought by one who is not specially damaged by the defendant's acts. *Id.* An action to recover the penalty can be maintained nowhere else than in the district where the stamping was done. The provision of § 732 that suits for penalties and forfeitures may be brought wherever the defendant may be found does not apply to actions under this section. *Pentlarge v. Kirby*, 19 F. R. 501. Jurisdiction depends upon the place where the offense is committed; not upon the residence of the parties to the action. *Winne v. Snow*, 19 F. R. 507. Service made upon the managing agent of a foreign corporation in a district where the stamping was done, confers jurisdiction, such service being allowed by the laws of the State in which it was made. *Hat-Sweat Manuf. Co. v. Davis S. M. Co.*, 31 F. R. 294. A penalty of more than one hundred dollars cannot be imposed. It may be recovered in an action of debt. *Stimpson v. Pond*, 2 Curtis, 502. The jury may

assess as damages not less than one hundred dollars, and as much more as it sees fit. *Nichols v. Newell*, 1 Fisher, 647. It is assumed without discussion that the penalty is the amount specified for each offense. *Tompkins v. Butterfield*, 25 F. R. 556. The jury need not be satisfied beyond a reasonable doubt that the defendant attached the word "patented" to an unpatented article. If they are reasonably satisfied it is sufficient. *Hawloetz v. Kass*, 25 F. R. 765. *Contra*, *Nichols v. Newell*, 1 Fisher, 647; *Tompkins v. Butterfield*, 25 F. R. 556, 558.

*Adee v. Peck*, 39 F. R. 209; *Lawrence v. Holmes*, 45 Id. 357. This and the preceding section are to be construed together. *Smith v. Walton*, 51 F. R. 17, 56 Id. 499. In a complaint to recover the penalty here provided, the precise date of the false stamping need not be averred. *Fish v. Manning*, 31 F. R. 340. But the false marking must have been done within five years, and within the judicial district where suit is brought. *Hotchkiss v. S. Cupples W. Co.*, 53 F. R. 1018. This section does not apply when the wrong invention is described in the patent. *Russell v. Newark Machine Co.*, 55 F. R. 297; *A. B. Dick Co. v. Fuerth*, 57 Id. 834. As only a person can be an informer under this Act, an executor cannot, as such, begin an action *qui tam* under it, since he represents an estate; nor can he continue such an action begun by a deceased person. 10 Harv. L. Rev. 267, 268. If the false marking of several articles is one continuous act, there is but one offense and can be but one penalty. *Hotchkiss v. S. Cupples W. Co.*, 53 F. R. 1018; *Taft v. Stephens Lith. Co.*, 38 Id. 28.

*Newgold v. American Electrical Novelty & Mfg. Co.*, 108 F. R. 341. Placing a mark on a part of a patented article which is not covered by its patent does not render the patent invalid. *Dade v. Boorum & Pease Co.*, 121 F. R. 135. See further, *Gandy v. Main Belting Co.*, 143 U. S. 587, 595, 36 L. ed. 272; *Parker v. Haworth*, 4 McLean, 370; *Herring v. Gage*, 15 Blatch. 124; *Fairbanks v. Jacobus*, 14 Id. 337; *Washburn Mfg. Co. v. Haish*, 9 Biss. 141; *Hoyt v. Computing Scale Co.*, 96 F. R. 250; *Schwebel v. Bothe*, 40 Id. 478.

## TITLE XLI

## COPYRIGHTS

[See now the new Copyright Law in force July 1, 1909.]

Giving false notice of copyright . . . . R. S., s. 4963.  
3 March, 1897; 29  
Stat. 694.

The penalty cannot be recovered if suit is brought by more than one person. *Ferrett v. Atwill*, 1 Blatch. 151. Though separate transactions under this law may constitute separate offenses, yet the printing of many copies as a single continuous act is but one offense, and each imprint is a separate cause of action. *Taft v. Stephens Lith. Co.*, 38 F. R. 28. The penalty imposed by this statute is for stamping or marking, as copyrighted, articles which may be copyrighted. The words "or other article," following the enumeration of book, map, &c., do not mean any article whatsoever, but such articles as are declared by the preceding sections to be the subject of copyright, only a part of which are specified by enumeration herein. *Rosenbach v. Dreyfuss*, 2 F. R. 217. If the article mentioned in the complaint may or may not be one which is copyrightable under the statute, it should be alleged to be so. *Id.* A summons in an action to recover the penalty provided for by this section must be indorsed with a reference to the statute under which the action is brought. But if the declaration served with the summons refers to the statute, the defect in the latter will be remedied. The error is not amendable under § 954 of these statutes, nor under the New York code of procedure. *Brown v. Pond*, 5 F. R. 31, 41. An indorsement as follows was ruled to be sufficient: "For \$2,500 debt for a penalty imposed by title 60, ch. 3, of an Act of Congress entitled 'An Act to revise the statutes,' &c., approved June 20, 1874," the complaint served showing the nature of the action fully. Though there was an error in the date, the references, being to the only Act of Congress which contained such a chapter and title, cured that mistake. *Brown v. Church*, 5 F. R. 41.

The United States circuit courts, as well as the district courts, have jurisdiction of suits to recover the penalties imposed by this section. *Taft v. Stephens Lith. Co.*, 37 F. R. 726. This section does not seem to require that the false notice shall be inserted upon one of the pages named in § 4962. *Rigney v. Raphael Tuck & Sons Co.*, 77 F. R. 173, 175. This statute does not impose a penalty for each imprint of the word "copyrighted" wrongfully made on an engraving, map, or chromo; but if the number so marked is large, and the marking upon them is one continuous act, only one penalty is recoverable. *Taft v. Stephens Lith. Co.*, 38 F. R. 28, 39 Id. 781. Miniature samples of a copyrighted photograph are not a publication. *Falk v. Engraving Co.*, 54 F. R. 890. But this section is violated by the insertion in a weekly trade paper, with notice of copyright, of a cut or print, though crude, of a picture. *Rigney v. Dutton*, 77 F. R. 176.

23 A. G. Op. 353. The false notice must contain all the essentials of a valid copyright notice under § 4962. *Hoertel v. Raphael Tuck & Sons Co.*, 94 F. R. 844. Prior to the amendment of 1897 this did not apply to a person knowingly selling a book with fictitious copyright notice unless he made the book or caused the notice to be inserted. *Ross v. Raphael Tuck & Sons Co.*, 91 F. R. 128. The jurisdiction conferred on the circuit courts by this amendment was only prospective in action. *McLoughlin v. Raphael Tuck Co.*, 191 U. S. 267, 48 L. ed. 178, affirming 115 F. R. 85, and 99 Id. 562. The statute has no extraterritorial effect. *McLoughlin v. Raphael Tuck Co.*, *supra*.

Where the title in the first 3 and last 34 pages of the copyrighted English edition of a dictionary was different from the copyrighted domestic edition, the publisher of the English edition was prohibited by this section from inserting therein a notice of the domestic copyright. *G. & C. Merriam Co. v. United Dict. Co.*, 146 F. R. 354. See further, *Snow v. Mast*, 63 F. R. 623.

Violating copyright of maps, charts, dramatic or musical compositions . . . R. S., s. 4965.  
2 March, 1895; 28  
Stat. 965.

An action under this section is abated by the death of the defendant, whatever may be the State law as to survival of actions. *Schreiber v. Sharpless*, 110 U. S. 76, 28 L. ed. 65. In an action under this section the defendant cannot be compelled to produce in evidence his books of account, etc. *Johnson v. Donaldson*, 3 F. R. 22. See *Bosselman v. Richardson*, 174 F. R. 622.

*"Every sheet . . . found in his possession."* This section is penal, and must be strictly construed. The penalty for each sheet is limited to sheets found in the defendant's possession. *Backus v. Gould*, 7 How. 798, 12 L. ed. 919; *Sarony v. Ehrich*, 28 F. R. 79, 23 Blatch. 556. The words "found in his possession" do not refer to the finding of the jury as to the defendant's possession of the articles, but the fact of their being so found prior to the time the cause of action accrued. *Thornton v. Schreiber*, 124 U. S. 612, 31 L. ed. 577. One who holds photographs in his possession as the employee of another, in whose premises they are stored, they being subject to the order of the latter, is not liable although he may be the superintendent of the department in which they are stored. *Id.* With the consent of the non-resident author, a citizen made a copy of the former's production and transferred it to another citizen, who copyrighted it and made an assignment thereof to a non-resident foreigner, who was the agent of the foreign author. On such facts it was held that the assignee was entitled to be protected in his rights under the assignment. *Carte v. Evans*, 27 F. R. 861. The penalty provided for will not be decreed in an action brought to obtain an account of profits. *Stevens v. Cady*, 2 Curtis, 200. The penalties and forfeitures herein provided for cannot be enforced in a suit in equity. *Chapman v. Ferry*, 12 F. R. 693.

*"Copy."* As here used, the word "copy" is a general term, added to the more specific terms which precede it, and used for the purpose of covering methods of reproduction not included in such terms. Hence a photograph of a copyrighted engraving is an infringement of the latter. *Rossiter v. Hall*, 5 Blatch. 362.

The corresponding section of the Act of 1790 provided for maps, charts, and books (1 St. 124). A chart at that time was a marine

map, according to all the dictionaries. The Act of 1802 (2 St. 171) added historical or other prints, and that of 1831 (4 St. 436) added musical compositions, cuts, and engravings; the Act of 1865 (13 St. 540) added photographs; and that of 1870 (16 St. 198) added paintings, drawings, chromos, statues, statuary, and models or designs intended to be perfected as works of fine arts. A distinction has been made as to the measure of recovery for the infringement of a book and other works ever since the Act of 1831. Sheets of paper exhibiting tabulated or methodically arranged information came to be known as charts in 1864. When books and charts were first protected by the copyright laws, such sheets of paper would not have been protected as a chart. No change has been made in the use of that term by Congress which indicates an intention to give it a broader meaning than it originally had. It has been kept separate from the word "book" and kept with the word "map," showing an intention to continue its use in the same sense of a chart of the class with maps and other works of art. Because this section is penal it must be construed strictly; hence such a chart as is stated is not within it. *Taylor v. Gilman*, 24 F. R. 632, 23 Blatch. 325.

*"Proprietor."* See § 4952. One who buys a painting, employs an artist to color it and who designed it, is the proprietor, notwithstanding it was suggested by a woodcut. *Schumacher v. Shwencke*, 25 F. R. 466.

*"One half to the use of the United States."* It is doubtful whether this clause applies to a case which does not relate to a painting, statue, or statuary. *Thornton v. Schreiber*, 124 U. S. 612, 614, 31 L. ed. 577.

Such forfeitures and the abatement of a suit therefor by the defendant's death, as decided in *Schreiber v. Sharpless*, 110 U. S. 76, 28 L. ed. 65, are not affected by State statutes. *United States v. De Goer*, 38 F. R. 81, 82. Distinct claims for penalties for infringing different copyrights may be joined in one suit, when the local practice allows joinder of different causes of action. *Snow v. Mast*, 65 F. R. 995.

The sheets and not the photographs determine the number in fixing

the amount to be recovered. *Falk v. Heffron*, 56 F. R. 299; *Bolles v. Outing Co.*, 77 Id. 966. If the legal remedy is adequate, an injunction cannot be granted. *Snow v. Mast*, 63 F. R. 623, 65 Id. 995.

See 23 A. G. Op. 371, 447. *Bleistein v. Donaldson Lithographing Co.*, 188 U. S. 239, 248, 47 L. ed. 460. A demand and refusal are not necessary conditions precedent to a recovery of the penalty. *Hegeman v. Springer*, 110 F. R. 374. Where a newspaper has been copyrighted as a whole, the unauthorized publication of one picture taken from it does not make the publisher liable to the penalty of this section. *Bennett v. Boston Traveler Co.*, 101 F. R. 445. It is a good defense to an action for the penalty that the publication was made by agents and servants of the defendant, in his absence, and without his direction, consent, or knowledge. *McDonald v. Hearst*, 95 F. R. 656. The penalty applies to corporations as well as to natural persons. *Falk v. Curtis Pub. Co.*, 98 F. R. 989. In an action to recover a penalty under this section the plaintiff's recovery is limited to copies actually found in the possession of the defendant, and does not extend to copies already sold. *Bolles v. Outing Co.*, 175 U. S. 262, 44 L. ed. 156; *Falk v. Curtis Pub. Co.*, 107 F. R. 129; *Child v. New York Times Co.*, 110 Id. 527. A declaration which fails to allege that any copies were found is fatally defective. *Falk v. Curtis Pub. Co.*, 98 F. R. 989. But it is not necessary to state what officer or agent had them in his custody. *Falk v. Curtis Pub. Co.*, 100 F. R. 77. Replevin is a proper remedy to enforce a forfeiture under this section. *Morrison v. Pettibone*, 87 F. R. 330; but see, *contra*, *Rinehart v. Smith*, 121 Id. 148. Where replevin is brought to recover the sheets, an action of assumpsit brought at the same time to recover the penalty is premature. *Falk v. Curtis Pub. Co.*, 102 F. R. 967.

As to the question of "possession" in the case of the infringing copies of a painting, see *American Lithographic Co. v. Werckmeister*, 146 F. R. 377; *Werckmeister v. American Tobacco Co.*, 138 Id. 162. As to questions relating to replevin, see *Hills v. Hoover*, 142 F. R. 904; *Gustin v. Record Pub. Co.*, 127 Id. 603. See further, *Bong v. Campbell*, 214 U. S. 236, 53 L. ed. 979.



That the decisions on this section are not harmonious, see *American Tobacco Co. v. Werckmeister*, 146 F. R. 375, 207 U. S. 284, 52 L. ed. 208. This section as amended is penal in nature and cannot be extended by construction; it contemplates a single action for the recovery of plates and copies infringing a copyright, and for the money penalty for copies found. Such action is statutory, and all the remedies given by the statutes must be exhausted therein; and after the owner has recovered judgment for the plates and copies, he cannot maintain a separate action to recover the money penalty. *Werckmeister v. American Tobacco Co.*, 207 U. S. 375, 52 L. ed. 254. See *Walker v. Globe Co.*, 130 F. R. 593. There is no requirement that the United States shall be a party. The evident purpose is that the proprietor shall account to the United States for one-half the money penalty recovered. *Werckmeister v. American Tobacco Co.*, *supra*. That strict construction and proof are required in an action, see *Caliga v. Inter Ocean Co.*, 157 F. R. 186. See further, *Bong v. Campbell Art Co.*, 214 U. S. 236, 243, 53 L. ed. 979; *Boston Traveler Co. v. Purdy*, 137 F. R. 717; *Morrison v. Pettibone*, 87 Id. 330; *Falk v. Heffron*, 56 Id. 299; 22 A. G. Op. 29; 23 Id. 376, 447.

Using dramatic or musical composition

without authority . . . . . R. S., s. 4966.  
6 Jan., 1897; 29 Stat.  
481.

Section 4966 is designed to secure to the author of a copyrighted play the sole right to its performance in any public place after it has been printed. Until then, the common law protects it. *Boucicault v. Fox*, 5 Blatch. 87, 97. The author or proprietor of a dramatic work may maintain an action for an infringement of his copyright committed after filing the title thereof, but before its publication. *Boucicault v. Wood*, 2 Biss. 34. The exclusive right given by this section applies only where the composition has been copyrighted. *Boucicault v. Hart*, 13 Blatch. 47. If all that is substantial and material in a scene of a copyrighted play, a great part of it being represented by actions and not by spoken language, is used in the

same order, with the same sequence of events, and conveyed the same sensations and impressions to the spectators, there is an infringement. *Daly v. Palmer*, 6 Blatch. 256.

This Act is penal, and the limitation of two years is applicable. *Daly v. Brady*, 69 F. R. 285, 290, 83 Id. 1007. This section gives to the Federal courts the only jurisdiction they have of an action for damages between citizens of the same State for the unauthorized public performance and representation of a copyrighted drama. Id., p. 289.

*Bolles v. Outing Co.*, 175 U. S. 262, 44 L. ed. 156; 23 A. G. Op. 371. This is not a penal statute. *Brady v. Daly*, 175 U. S. 148, 44 L. ed. 109, 83 F. R. 1007. But see same case, *supra*. Where a copyrighted song is sung in a dramatic manner by a certain actress in a musical comedy by exclusive license of the owner, a singing of the chorus only by another actress in another company as a *bona fide* imitation of the first actress is not an infringement. *Bloom & Hamlin v. Nixon*, 125 F. R. 977.

The amendment of 1897 does not authorize a suit for injunction to be brought in any district where the defendant may be found, but merely confers on the circuit court of such district the right to enforce, dissolve, or modify an injunction which has been issued in the original suit. *Lederer v. Rankin*, 90 F. R. 449; *Fraser v. Barrie*, 105 Id. 787. See *Koppel v. Downing*, 11 App. D. C. 93, 98; *Cram v. Chicago, B. & Q. R. Co.*, 84 Neb. 607, 613.

## TITLE XLII

### PENSIONS

#### *Chapter One. — Wars prior to eighteen hundred and sixty-one.*

Making false oath concerning Indian war pensions. . . . . 27 July, 1892, s. 3;  
27 Stat. 282.

#### *Chapter Five. — Applications and attorneys.*

Making false affidavits, certificates, vouchers, etc. . . . . R. S., s. 4746.  
7 July, 1898; 30  
Stat. 718.

This Act repealed all former ones on the subject of pension affidavits. 9 Crim. Law Mag. 707. It is not necessary that the indictment should charge the act to have been done "feloniously," or with "felonious intent." *United States v. Staats*, 8 How. 41, 12 L. ed. 979. See *United States v. Gowdy*, 37 F. R. 332; *United States v. Hartman*, 65 Id. 490. Prosecutions under this section must be by indictment, and not by information. *United States v. Tod*, 25 F. R. 815. See *United States v. Daubner*, 17 Id. 793.

This section does not require that the pension claim must be false, concerning which the false affidavits are presented. *United States v. Adler*, 49 F. R. 733. The offense of making a false deposition in aid of a fraudulent pension claim is properly within § 5438, and not within this section, which is in terms applicable only to the offense of procuring another person to commit the offense. *Edgington v. United States*, 164 U. S. 361, 363, 41 L. ed. 467. This section and § 5421 are incompatible as to the punishment provided; this provision relates to the case of a false affidavit made by the defendant himself, while § 5421 covers the case of a false affidavit procured from another person. *United States v. Kuentsler*, 74 F. R. 220; *United States v. Glasener*, 81 Id. 566. Under §§ 5418, 5421, or 5479 failure to aver intent to defraud the United States would probably be a fatal defect, but such intent is not material under § 4746. *United States v. Van Leuvan*, 62 F. R. 69.

That intent to defraud is not necessary, see *United States v. Hansee*, 79 F. R. 303. As to perjury, see *United States v. Hampton*, 101 F. R. 714; *United States v. Boggs*, 31 Id. 337. *In re Waite*, 81 Id. 359. It must appear that the false statements were necessary to the granting of the pension. *United States v. Purdy*, 38 F. R. 902. The essentials of the offense are "knowingly procuring the presentation of a false affidavit concerning a claim for a pension." *United States v. Adler*, 49 F. R. 733. The Act amending this section related solely to the subject of pensions and bounty land claims, and simply extended the statute to the use of fraudulent papers in

regard to such claims, and a violation of its provisions as amended cannot arise from acts in connection with entries other than those on pensions and bounty claims. *United States v. Keitel*, 211 U. S. 370, 53 L. ed. 230, 157 F. R. 396; *United States v. Herr*, 211 U. S. 406, 53 L. ed. 252. See *London v. United States*, 171 F. R. 82. See further on this section, *Pooler v. United States*, 127 F. R. 509; *United States v. Wood*, Id. 171; *Miller v. United States*, 136 Id. 581.

Attorney or agent charging unlawful fee  
or withholding pension from pensioner 27 June, 1890, s. 4;  
26 Stat. 183.  
19 April, 1908, s. 3;  
35 Stat. 64.

*Phillips v. Hitchcock*, 19 App. D. C. 237, 503.

Agent or attorney charging unlawful fee  
for securing increase of pension . . . 3 March, 1891; 26  
Stat. 1082.

Charging excessive fees in pension or  
bounty land cases . . . . . R. S., s. 5485.  
4 July, 1884, s. 4;  
23 Stat. 101.

This section should be considered in connection with § 4786 as amended by above statute of 4 July, 1884. See also Act of March 3, 1891 (26 St. 1082). This section is penal in its character. *United States v. Snow*, 2 Flipp. 1; *United States v. Starn*, 17 F. R. 435. It was passed for the protection of the claimant. *United States v. Van Leuven*, 62 F. R. 52; *Wolcott v. Frissell*, 134 Mass. 1; *United States v. Moyers*, 15 Id. 411. "Any scheme or contrivance by which, under the guise of a loan, a mortgage, or a gift, or other dealing, the claim agent retains more than the legal fee, is a violation of this section." *United States v. Brown*, 40 F. R. 457, 459. As to intent, knowledge of statute, fraud, etc., see *United States v. Moore*, 18 F. R. 686; *United States v. Koch*, 21 Id. 873; *Smart v. White*, 73 Me. 332; *United States v. Benecke*, 98 U. S. 447, 25 L. ed. 192. The statute is not confined to the regular attorney for the claimant,

recognized as such at the pension office. *United States v. Schindler*, 10 F. R. 547; *Caverly v. Robbins*, 149 Mass. 16; *Frisbie v. United States*, 157 U. S. 160, 39 L. ed. 657; *United States v. Reynolds*, 48 F. R. 721. As to bank or banker as agent, see *United States v. Howard*, 7 Biss. 56. It has been held that a formal demand is not necessary. *United States v. Moyers*, 15 F. R. 411. As to *bona fide* gift, see *United States v. Brown*, 40 F. R. 457; *Schwab v. Ginkinger*, 181 Pa. St. 8. As to loans, etc., to agent, see *United States v. Moyers*, *supra*; *United States v. Moore*, 18 F. R. 686. As to reimbursing an attorney for expenses, see *United States v. Moore*, *supra*; *Morgan v. Davis*, 47 Vt. 610. As to other expenses, see *United States v. Snow*, 2 Flipp. 1; *Southwick v. Evans*, 17 R. I. 198. As to repayment of borrowed money, see *Crane v. Linneus*, 77 Me. 59. An action cannot be maintained against a third party by a pension attorney on a verbal promise of a larger fee. *Wolcott v. Frissell*, 134 Mass. 1. "The word 'withholding' has a definite signification, and we think contemplates, as used in the statute under consideration, not the fraudulent obtaining of money from a pensioner, but the withholding of the money before it reaches the hands of the pensioner and passes under his dominion and absolute control." *Ballew v. United States*, 160 U. S. 187, 194, 40 L. ed. 388. As to forged indorsements, see *United States v. Ryckman*, 12 F. R. 46. As to the meaning of "claimant," see *United States v. Benecke*, 98 U. S. 447, 25 L. ed. 192. As to the payment by agreement of a debt of the pensioner and as to the retention of pension money for outside services, see *United States v. Hewitt*, 11 F. R. 243. As to expenses of last sickness, etc., see *United States v. Nicewonger*, 20 F. R. 438. As to the statute of limitations, see *United States v. Irvine*, 98 U. S. 450, 25 L. ed. 193. As to indictments, see *United States v. Reynolds*, 48 F. R. 215; *United States v. Wilson*, 29 Id. 286; *United States v. Koch*, 21 Id. 873; *United States v. Schindler*, 10 Id. 547; *United States v. Howard*, 7 Biss. 56. See further, *Humes v. United States*, 170 U. S. 210, 42 L. ed. 1011; also 1 Gould & Tucker's Notes on U. S. Rev. Sts. 1036.

- Receiving compensation for securing legislation . . . . . 10 March, 1902; 32 Stat. 62.  
 24 April, 1906; 34 Stat. 133.  
 28 May, 1908, s. 1; 35 Stat. 419.
- Claiming fee, etc., for securing pension for army nurse . . . . . 5 Aug., 1892; 27 Stat. 349.
- Chapter Eight. General provisions.*  
 Guardian, etc., embezzling pension of ward . . . . . R. S., ss. 4783, 5486.  
 10 Feb., 1891; 26 Stat. 746.
- Ballew v. United States, 160 U. S. 187, 196, 40 L. ed. 388; Southwick v. Evans, 17 R. I. 198; United States v. Hall, 98 U. S. 343, 25 L. ed. 180; United States v. Starn, 17 F. R. 435; Manning v. Spry, 121 Iowa, 191; United States v. Bennett, 12 Blatch. 345.
- Claim agents withholding discharge papers without consent . . . . . 21 May, 1872; 17 Stat. 137.
- United States v. Webber, 21 F. R. 187.

## TITLE XLIV

## TERRITORIES AND INSULAR POSSESSIONS

*Chapter One. — Provisions common to all the Territories.*

- Owners of coal mines failing to comply with regulations concerning machinery, ventilation, etc. . . . . 3 March, 1891, s. 7; 26 Stat. 1105.

Deserant v. Cerillos Coal Co., 178 U. S. 409, 44 L. ed. 1127.

- Employing children in mines . . . . . 3 March, 1891, s. 12; 26 Stat. 1105.

*Chapter Two. — New Mexico, Arizona, and Oklahoma.*

- Railroads failing to have stations at town sites . . . . . 8 Aug., 1894, ss. 1, 2; 28 Stat. 263.

*Chapter Three. — Alaska.*

|  |                                       |
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| Clerk of court failing to account for fees received . . . . .          | 6 June, 1900, s. 16;<br>31 Stat. 328. |
| Person appointed road overseer refusing to serve . . . . .             | 27 April, 1904; 33<br>Stat. 392.      |
| Road overseer failing to deliver records, etc., to successor . . . . . | 27 April, 1904; 33<br>Stat. 392.      |
| Persons failing to work on roads, etc. . .                             | 27 April, 1904; 33<br>Stat. 392.      |
| Persons refusing to do reasonable day's work, etc. . . . .             | 27 April, 1904; 33<br>Stat. 393.      |
| Road overseer failing to perform duties .                              | 27 April, 1904; 33<br>Stat. 393.      |

*Chapter Six. — The Philippine Islands.*

|                                 |                                       |
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| Employing slave labor . . . . . | 1 July, 1902, s. 74;<br>32 Stat. 709. |
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## TITLE XLV

## RIVERS AND HARBORS

*Chapter One. — Improvements.*

|   |                                |
|---|--------------------------------|
| Failing to furnish shipping statistics to persons in charge of harbor works . | 8 Feb., 1891; 26<br>Stat. 766. |
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*Chapter Two. — Obstructions to navigation.*

|  |   |
|--|---|
| Regulations concerning the construction of bridges, wharves, etc., and penalties for violation . . . . . | 3 March, 1899, s. 12;<br>30 Stat. 1151.<br>20 Feb., 1900; 31<br>Stat. 32. |
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Section 12 provides that "every person and every corporation that shall violate any of the provisions of sections nine, ten, and eleven of this Act," etc., "shall be deemed guilty," etc. For cases on superseded statutes, see 6 Fed. Sts. Annotated, 808-813. On § 9 see 25 A. G. Op. 601.

Section 10 is not so worded as to compel the conclusion that Congress intended to ignore altogether the wishes of a State in respect

of structures in navigable waters that are wholly within its limits. *Cummings v. Chicago*, 188 U. S. 410, 430, 47 L. ed. 525; *Montgomery v. Portland*, 190 Id. 89, 47 L. ed. 965. See further, *West Chicago R. Co. v. Chicago*, 201 U. S. 506, 527, 50 L. ed. 845; *United States v. Rio Grande Dam Co.*, 184 Id. 416, 46 L. ed. 619; *Kansas City R. Co. v. Wiygul*, 82 Miss. 223; 23 A. G. Op. 551, 22 Id. 501; *Rogers Sand Co. v. Pittsburgh R. Co.* 139 F. R. 7.

Violating rules of Secretary of War concerning dumping of refuse in navigable waters . . . . .

19 Sept., 1890, s. 6;  
26 Stat. 453.  
18 Aug., 1894, ss. 6, 7,  
8; 28 Stat. 363.  
3 March, 1899, s. 13;  
30 Stat. 1152.

Scow No. 36, 144 F. R. 932; *United States v. Moran*, 113 Id. 172; *Slingerland v. International Co.*, 43 N. Y. App. Div. 215, 227; 22 A. G. Op. 646.

Depositing refuse in navigable waters; obstructing channels, etc. . . . .

3 March, 1899, s. 16-  
30 Stat. 1153.

Scow No. 36, *supra*; *United States v. Moran, supra*; *The Newburgh*, 130 F. R. 321; *The Northern Queen*, 117 Id. 906; *The Itasca*, Id. 885; 22 A. G. Op. 646.

Rules concerning drawbridges, and penalties for violation . . . . .

18 Aug., 1894, s. 5;  
28 Stat. 362.  
13 June, 1902, s. 6;  
32 Stat. 374.

22 A. G. Op. 312.

Rules concerning the use of canals, and penalties for violation . . . . .

18 Aug., 1894, s. 4;  
28 Stat. 362.  
13 June, 1902, s. 11;  
32 Stat. 374.

*United States v. Ormsbee*, 74 F. R. 207.



Rules concerning floating timber and logs,  
and penalties for violation . . . . . 9 May, 1900, s. 2; 31  
Stat. 172.

*Chapter Three. — Provisions applicable to particular rivers, harbors,  
and canals.*

Violating rules for protecting South Pass,  
Mississippi River . . . . . 11 Aug., 1888, s. 5;  
25 Stat. 424.  
19 Sept., 1890, s. 3;  
26 Stat. 452.

Violating rules for protecting reservoirs at  
headwaters of Mississippi River . . . 11 Aug., 1888; 25  
Stat. 419.  
16 May, 1888, s. 2;  
25 Stat. 151.

Violating regulations for protecting certain  
anchorage grounds . . . . . 6 Feb., 1893, s. 2;  
27 Stat. 431.  
6 June, 1900, s. 2;  
31 Stat. 682.

The Monarch, 89 F. R. 875; The Chauncey M. Depew, 59 Id. 791.

Violating regulations for anchorage of ves-  
sels in St. Mary's River . . . . . 6 March, 1896, s. 3;  
29 Stat. 54.  
26 April, 1906, s. 1;  
34 Stat. 136.

The North Star, 108 F. R. 436.

Refusing to obey instructions of harbor-  
master at Washington, D. C. . . . . 2 March, 1895, s. 2;  
28 Stat. 741.

Depositing refuse, etc., in Potomac River 19 May, 1896, s. 3;  
29 Stat. 127.

*Chapter Four. — New York Harbor.*

Depositing refuse in New York Harbor 29 June, 1888, s. 1;  
25 Stat. 209.

*Ansbro v. United States*, 159 U. S. 695, 40 L. ed. 310; *Randall v. United States*, 107 F. R. 935; *United States v. Romard*, 89 Id. 156; *The Bombay*, 46 Id. 665; *The Anger Head*, Id. 664; *The G. L. Garlic*, 45 Id. 380; *United States v. The Sadie*, 41 Id. 396, 823; 19 A. G. Op. 317.

Master, etc., of vessel, towing scow, etc.,  
loaded with refuse . . . . . 29 June, 1888, s. 2;  
25 Stat. 209.

Moving scow, etc., loaded with refuse  
without permit . . . . . 29 June, 1888, s. 3;  
25 Stat. 209.  
18 Aug., 1894, s. 3;  
28 Stat. 360.

United States v. Newark Meadows Co., 173 F. R. 426.

Dumping refuse, etc., in other place than  
specified in permit . . . . . 29 June, 1888, s. 3;  
25 Stat. 209.  
18 Aug., 1894, s. 3;  
28 Stat. 361.  
28 May, 1908, s. 3;  
35 Stat. 426.

Jaycox v. United States, 107 F. R. 938. See cases *supra*.

Bribing inspector . . . . . 29 June, 1888, s. 3;  
25 Stat. 209.  
18 Aug., 1894, s. 3;  
28 Stat. 362.  
Failing to indorse and return permit . . 29 June, 1888, s. 3;  
25 Stat. 209.  
18 Aug., 1894, s. 3;  
28 Stat. 362.

See cases *supra*.

Violating rules concerning disposition of  
dredged matter . . . . . 29 June, 1888, s. 4;  
28 Stat. 209.

See cases *supra*.

Fishing for shellfish, or interfering with  
navigation in New York Harbor . . . 18 Aug., 1894, s. 2;  
28 Stat. 360.

*Chapter Six. — California Debris Commission.*

Injuring, etc., any dam or work erected  
under the provisions of this title and  
chapter . . . . . 1 March, 1893, s. 22;  
27 Stat. 510.

- Mining by hydraulic process so as to injure navigable waters . . . . . 1 March, 1893, s. 22;  
27 Stat. 510.

## TITLE XLVI

### THE POSTAL SERVICE

#### *Chapter Two. — City, rural, and immediate delivery.*

- Special-delivery messenger deemed postal employee and to be subject to same penalties . . . . . 4 Aug., 1886, s. 4;  
24 Stat. 221.  
3 March, 1903, s. 4;  
32 Stat. 1176.

#### *Chapter Eight. — Carrying the mail.*

- Surety on bond of bidder for carrying the mail willfully swearing falsely . . . . R. S., s. 3944.  
11 Aug. 1876, s. 246;  
19 Stat. 139.
- Combining to prevent bids for carrying the mail . . . . . R. S., s. 3950.

## TITLE XLVII

### COMMERCE AND NAVIGATION

#### *Chapter One. — Registry and recording.*

- Master making false oath to secure registration of vessel . . . . . R. S., s. 4144.
- Failing to deliver up certificate when required . . . . . R. S., s. 4146.  
16 Jan., 1895, s. 2;  
28 Stat. 624.

#### *United States v. Montell, Taney, 47.*

- Failing to have tonnage number marked on vessel, etc. . . . . R. S., s. 4153.  
19 June, 1886, s. 5;  
24 Stat. 81.
- Failing to provide space for crew in vessel 3 March, 1897, s. 2;  
29 Stat. 687.
- Failing to surrender certificate granted purchaser . . . . . R. S., s. 4160.
- Failing to surrender certificate granted agent . . . . . R. S., s. 4162.

Failing to surrender certificate obtained  
upon loss of original . . . . . R. S., s. 4168.

*Harrison v. Vose*, 9 How. 372, 13 L. ed. 179.

Failing to register anew when required . . R. S., s. 4169.

Failing to report change of master . . . R. S., s. 4171.

*The Boston*, Blatch. & H. 309, 320; S. T. D. 8067.

Failing to have number carved, etc., on  
beam . . . . .

R. S., s. 4177.

19 June, 1886, s. 6;

• 24 Stat. 81.

Rules governing painting of name on stern  
of vessel, and penalty for violations . .

R. S., s. 4178.

20 Jan., 1897, s. 1;

29 Stat. 491.

*Ayer & Lord Co. v. Kentucky*, 202 U. S. 409, 419, 50 L. ed. 1082,  
117 Ky. 161; *The Lotus No. 2*, 26 F. R. 637, 640; *Stearns v. Doe*,  
12 Gray, 482; *Yost v. Lake Erie Co.*, 112 F. R. 746; S. T. D. (1895),  
p. 334; S. T. D. (1892), p. 18.

Making false register, certificate of regis-  
try, or giving false information as to  
description of vessel, etc. . . . .

R. S., s. 4187.

*Re Leszynsky*, 16 Blatch. 9, 18, 19.

Officers neglecting duties . . . . . R. S., s. 4188.

*Re Leszynsky*, *supra*.

Making or using forged sea letters, pass-  
ports, certificates of registry, etc. . . .

R. S., s. 4191.

17 A. G. Op. 82, 83.

*Chapter Two. — Clearance and entry.*

Vessel departing from foreign port without  
delivering manifest and obtaining  
clearance . . . . .

R. S., s. 4197.

*United States v. New York and Cuba Mail Co.*, 200 U. S. 488,  
50 L. ed. 569; *The S. Oteri*, 67 F. R. 146; *The Ariel*, 1 Haskell,  
65; *Bas v. Steel*, Pet. C. C. 406, 3 Wash. C. C. 381.

Master of foreign vessel failing to deposit  
papers with consul, etc., on arrival . . . R. S., s. 4200.

Lorway *v.* Lousada, 1 Lowell, 77; 7 A. G. Op. 395.

Foreign consul delivering papers to master  
before clearance . . . . . R. S., s. 4211.

Master failing to furnish statement to col-  
lector of services rendered by consul . . . R. S., s. 4213.  
26 June, 1884, s. 13;  
23 Stat. 56.

Pleasure yachts, etc., engaging in trade,  
and otherwise violating laws . . . . . 16 Jan., 1895, ss. 4-6;  
28 Stat. 625.

*Chapter Four. — Emigrant vessels.*

Rules concerning compartments for emi-  
grants, and penalties for violation . . . 2 Aug., 1882, s. 1;  
22 Stat. 186.

Henderson *v.* Mayor, 92 U. S. 250, 23 L. ed. 543; *The Danube*,  
55 F. R. 993; *The Scotia*, 39 Id. 429; *United States v. Nicholson*, 12  
Id. 522; *United States v. Thomson*, Id. 245; *United States v. Morton*,  
1 Lowell, 179; *Oceanic Steam Co. v. Tappan*, 16 Blatch. 296; *Passenger Cases*, 7 How. 283, 12 L. ed. 702; *City of New York v. Miln*,  
11 Pet. 102, 9 L. ed. 648.

Rules and regulations concerning berths  
for emigrants, and penalties for violation . . . 2 Aug., 1882, s. 2;  
22 Stat. 186.

22 A. G. Op. 500.

Rules concerning ventilation, hygiene, etc.,  
of passenger decks, and penalties for  
violation . . . . . 2 Aug., 1882, s. 3;  
22 Stat. 187.

O'Carroll *v.* The Havre, 45 F. R. 764.

Rules governing food, meals, etc., and  
penalties for violation . . . . . 2 Aug., 1882, s. 4;  
22 Stat. 188.

O'Carroll *v.* The Havre, 45 F. R. 764; *The Prinz Georg*, 23 Id. 906;  
M'Affee *v.* The Creole, 1 Phila. 190.

Rules concerning hospital compartment,  
surgeon, medicines, etc., and penalties  
for violation . . . . . 2 Aug., 1882, s. 5;  
22 Stat. 188.

*O'Brien v. Cunard Steamship Co.*, 154 Mass. 272.

Rules concerning discipline and cleanliness,  
and penalties for violation . . . . . 2 Aug., 1882, s. 6;  
22 Stat. 188.

Officers, seamen, etc., visiting passengers'  
apartments . . . . . 2 Aug., 1882, s. 7; 22  
Stat. 189.

Rules for carrying explosives, horses, and  
cattle, etc., and penalties for violation . . 2 Aug., 1882, s. 8;  
22 Stat. 189.

Master permitting the boarding of vessel  
by other than specified persons . . . . 2 Aug., 1882, s. 19;  
22 Stat. 189.  
31 March, 1900, ss. 1,  
2; 31 Stat. 58.

22 A. G. Op. 460, 499; 19 Id. 706.

Rules of Secretary of Commerce and Labor  
concerning boarding of vessels, and pen-  
alties for violation . . . . . 2 Aug., 1882, s. 9; 22  
Stat. 189.  
31 March, 1900, ss. 1,  
2; 31 Stat. 58.

Master refusing to pay ten dollars in each  
case of death at sea . . . . . 2 Aug., 1882, s. 10;  
22 Stat. 190.

Vessel leaving port before being duly  
cleared by collector . . . . . 2 Aug., 1882, s. 12;  
22 Stat. 190.

*The Strathairly*, 124 U. S. 558, 31 L. ed. 580; *The Nellie May*,  
50 F. R. 605; *The Scotia*, 39 Id. 429; *The Sidonian*, 38 Id. 440; *The*  
*Prinz Georg*, 23 Id. 906.

*Chapter Five. — Liability of vessels.*

Shipping inflammable material in vessel . R. S., s. 4288.

*Liverpool Steam Co. v. Phenix Ins. Co.*, 129 U. S. 397, 32 L. ed.  
788.

Inserting in bill of lading, etc., clause relieving from liability . . . . . 13 Feb., 1893, ss. 1, 7; 27 Stat. 445.

United States *v.* Cobb, 163 F. R. 791; The Seneca, Id. 591; Donaldson *v.* J. W. Perry Co., 138 Id. 643; Bethel *v.* Mellor Co., 131 Id. 129; Lake Steam Shipping Co. *v.* Bacon, 129 Id. 819; The Germanic, 107 Id. 294, 124 Id. 1, affirmed in 196 U. S. 589, 596; The Seaboard, 119 F. R. 375, 49 L. ed. 610; Cunard Steamship Co. *v.* Kelley, 115 Id. 678; The Oneida, 108 Id. 886; The Palmas, Id. 87; Insurance Co. *v.* North German Lloyd Co., 106 Id. 973; The Whitlieburn, 89 Id. 526, 528; Swift *v.* Furness, 87 Id. 345; The Kensington, 183 U. S. 263, 46 L. ed. 190, 94 F. R. 885; Knott *v.* Botany Mills, 179 U. S. 69, 45 L. ed. 90; Calderon *v.* Atlas Steamship Co., 170 Id. 272, 42 L. ed. 1033.

Inserting covenants in bill of lading, etc., avoiding exercise of due diligence . . . . . 13 Feb., 1893, s. 2; 27 Stat. 445.

Golcar S. S. Co. *v.* Tweedie Trading Co., 146 F. R. 563; La Bourgogne, 144 Id. 781; The Abbazia, 127 Id. 495; The Germanic, *supra*; The Prussia, 93 Id. 837; The Rosedale, 88 Id. 324, 92 Id. 1021; The Guildhall, 58 Id. 796; The Southwark, 191 U. S. 1, 6, 48 L. ed. 65; The Kensington, 183 U. S. 263, 46 L. ed. 190, reversing 94 F. R. 885; International Co. *v.* Farr Mfg. Co., 181 U. S. 218, 45 L. ed. 830; The Carib Prince, 170 Id. 655, 660, 42 L. ed. 1181.

Rules concerning bills of lading, and penalties for violation. . . . . 13 Feb., 1893, ss. 4, 7; 27 Stat. 445.

The Kensington, 183 U. S. 273, 46 L. ed. 190, 94 F. R. 885; The Isola Di Procida, 124 F. R. 942, 944; United States *v.* Cobb, 163 Id. 791; The Minnehaha, 114 Id. 672.

Refusing to issue bill of lading on demand . . . . . 13 Feb., 1893, s. 5; 27 Stat. 446.

The Minnehaha, 114 F. R. 672.

*Chapter Six. — Log books.*

Neglecting to keep up log book in manner required, or making entry more than twenty-four hours after arrival, etc. . R. S., s. 4292.

The Victorian, 88 F. R. 797.

*Chapter Nine. — Vessels engaged in foreign commerce.*

Vessel departing without passport . . . R. S. s. 4307.

Master failing to deposit ship's papers with consul . . . . . R. S., s. 4310.

Levy v. Burley, 2 Sumner, 355; Parsons v. Hunter, Id. 419; 21 A. G. Op. 190; 9 Id. 386; 7 Id. 395.

*Chapter Ten. — Vessels engaged in domestic commerce.*

Rules for exchange of enrollment and register when vessel in another district, and penalty for violation . . . . . R. S., s. 4323.

United States v. Shackford, 5 Mason, 445, Ware, 171.

Master failing to deliver license at expiration . . . . . R. S., s. 4325.  
24 April, 1906, s. 2;  
34 Stat. 136.

Owner failing to have name of vessel painted on stern . . . . . R. S., s. 4334.  
26 June, 1884, s. 21.  
23 Stat. 58.

Ayer & Lord Co. v. Kentucky, 202 U. S. 409, 420, 50 L. ed. 1082, 117 Ky. 161; The Jennie Hayes, 37 F. R. 373; The Lotus, No. 2, 26 Id. 640; S. T. D. (1895), p. 1334.

New master failing to report change of master . . . . . R. S., s. 4335.

Master not exhibiting enrollment or license when required . . . . . R. S., s. 4336.

The John J. Wiltsie, 3 Ben. 251.

Foreign vessels transporting passengers between United States ports . . . . . 17 Feb., 1898, s. 2;  
30 Stat. 248.

18 A. G. Op. 445.



Foreign vessels carrying passengers between United States and Philippines . 30 April, 1906, s. 2;  
34 Stat. 154.

Vessel departing without having left duplicate manifest of lading; master liable . R. S., s. 4350.

24 A. G. Op. 27.

Master of vessel containing certain goods failing to deliver up manifest before unloading, etc. . . . . R. S., s. 4352.

24 A. G. Op. 27.

Vessel proceeding without manifest and permit; master liable . . . . . R. S., s. 4354.

Master of vessel under twenty tons failing to deliver up manifest . . . . . R. S., s. 4356.

United States v. Carr, 8 How. 1, 12 L. ed. 963.

Master of vessel failing to exhibit manifest on arrival; additional penalty if distilled spirits on board; refusing to answer interrogatories truly . . . . . R. S., s. 4360.

Refusing to deliver up permit for merchandise to be transported inland, etc. . . R. S., s. 4363.

Priestman v. United States, 4 Dall. 28, 1 L. ed. 727.

Fishing vessels, permitted to land at foreign ports, failing to deliver manifests and entries . . . . . R. S., s. 4364.

Master neglecting to report when vessel puts into port other than destination . R. S., s. 4366.

Master of foreign vessel bound coastwise failing to deliver duplicate manifests, etc.; refusing to swear to verity of manifest, etc. . . . . R. S., s. 4367.

24 A. G. Op. 57; 4 Id. 270; 2 Id. 393.

Master of foreign vessel bound coastwise failing to deliver manifest to collector on arrival; failing to swear to verity of manifest; failing to deliver permit . . R. S., s. 4368.

- Vessel entitled to be documented trading  
without a license . . . . . 19 June, 1886, s. 7;  
24 Stat. 81.
- The *Eliza*, 2 Gall. 4; 18 A. G. Op. 564; 17 Id. 388; 16 Id. 247, 563;  
15 Id. 35, 52.
- Making illegal enrollment or license; giv-  
ing false information as to vessel to be  
enrolled or licensed . . . . . R. S., s. 4373.
- Re Leszynsky*, 16 Blatch. 9, 19.
- Failing or refusing to perform duties pre-  
scribed by this chapter . . . . . R. S., s. 4374.
- Forging or altering enrollment, license, etc. R. S., s. 4375.
- The *Two Friends*, 1 Gall. 118, 120. See note to § 72, *supra*.
- Obstructing officers . . . . . R. S., s. 4376.
- Chapter Eleven. — Vessels engaged in fisheries.*
- Fisherman deserting or absconding him-  
self from vessel . . . . . R. S., s. 4392.
- Telles v. Lynde*, 47 F. R. 912; *The Cornelia M. Kingsland*, 25  
Id. 856.
- Chapter Twelve. — Inspection of steam vessels.*
- Inspection of sea-going barges; require-  
ments before registry; penalty for vio-  
lation, etc. . . . . 28 May, 1908, ss. 10-  
13; 35 Stat. 428.
- Pilot, mate, or master, etc., violating regu-  
lations relating to passing of vessels . . R. S., s. 4413.  
7 June, 1897, s. 5;  
30 Stat. 103.
- The *New York*, 175 U. S. 187, 195, 44 L. ed. 126; *The Albert  
Dumois*, 177 Id. 240, 244, 246, 44 L. ed. 751; *The Delaware*, 161  
Id. 459, 464, 40 L. ed. 771; *Belden v. Chase*, 150 Id. 674, 698, 37  
L. ed. 1218; *The Lisbonense*, 53 F. R. 293, 298; *The T. B. Van  
Houten*, 50 Id. 590; *United States v. Greenman*, 37 Id. 64; *United  
States v. Miller*, 26 Id. 95; *The Garden City*, 19 Id. 529; *The B. B.  
Saunders*, Id. 118; *The Grand Republic*, 16 Id. 424; *The Jesse  
Williamson, Jr.*, 17 Blatch. 106; 21 A. G. Op. 106.

- Inspector serving without specified qualifications . . . . . R. S., s. 4416.  
3 March, 1905, s. 2;  
33 Stat. 1029.
- Carrying passengers and gunpowder contrary to law . . . . . R. S., s. 4424.
- The Oyster Police Steamers, 31 F. R. 763, 35 Id. 926.
- Inspector certifying falsely touching steam vessels . . . . . R. S., s. 4425.
- Improperly constructing boilers . . . . R. S., s. 4429.  
7 Aug., 1882; 22  
Stat. 310.
- Affixing fraudulent, etc., stamp to boiler plate . . . . . R. S., s. 4430.  
22 Jan., 1894; 28  
Stat. 28.
- Counterfeiting stamps prescribed for boiler iron or steel plates; falsely marking iron or steel plates . . . . . R. S., s. 4432.
- Obstructing safety valve, etc. . . . . R. S., s. 4437.
- Employing certain persons who are not licensed by inspectors . . . . . R. S., s. 4438.  
25 Jan., 1907; 34  
Stat. 864.  
28 May, 1908, s. 2;  
35 Stat. 425.
- United States *v. Huff*, 13 F. R. 630; United States *v. Sims*, 9 Id. 443; The Steamship United States, 1 Id. 133; Steamship Co. *v. Joliffe*, 2 Wall. 450, 17 L. ed. 805; The Maria, Deady, 89, 101; 24 A. G. Op. 138; 15 Id. 61; 13 Id. 248; 11 Id. 488; S. T. D. 8010; Id. (1896), p. 680.
- Making false oath; changing certificate . . . . . R. S., s. 4445.  
23 March, 1900; 31  
Stat. 50.
- The Sappho, 89 F. R. 366; 24 A. G. Op. 136, 140; S. T. D. 8064.
- Neglecting to place license where it can be seen . . . . . R. S., s. 4446.  
19 Feb., 1907; 34  
Stat. 897.
- S. T. D. 8453.

Navigating vessel after notice to make repairs . . . . . R. S., s. 4454.

United States *v.* Miller, 26 F. R. 95, 100.

*Chapter Thirteen. — Transportation of passengers and merchandise.*

Navigating vessel with less than required number of licensed officers and men . . . . . R. S., s. 4463.  
2 April, 1908, s. 1;  
35 Stat. 55.

*In re* Pacific Mail Steamship Co., 130 F. R. 76; Flint R. Co. *v.* Marine Ins. Co., 71 Id. 210; *In re* Meyer, 74 Id. 881; Lord *v.* Goodall, 4 Sawyer, 292.

Violating rules governing regattas or marine parades . . . . . 28 April, 1908, s. 4;  
35 Stat. 69.

Failing to keep passenger list . . . . . R. S., s. 4468.  
28 May, 1908, s. 4;  
35 Stat. 425.

Hatch *v.* The Boston, 3 F. R. 807; 8 Id. 628.

Unlawfully carrying cotton or hemp . . . R. S., s. 4473.  
Rules concerning use of petroleum as fuel and penalties for violation . . . . . R. S., s. 4474.  
18 Oct., 1888; 25 Stat. 564.

S. T. D. (1893), p. 731; Id. (1890), p. 281.

Shipping or attempting to ship dangerous articles not duly marked or packed . . . R. S., s. 4476.

United States *v.* Giordani, 163 F. R. 772; United States *v.* Chenoweth, 6 McLean, 139.

Failing to provide proper stairways . . . R. S., s. 4484.

Failure to keep sufficient watchmen on vessel to guard against fire and other dangers . . . . . R. S., s. 4478.

Overcrowding or occupying passenger space with freight, etc. . . . . R. S., s. 4485.

Manufacturing or selling, etc., life preservers unlawfully constructed; manufacturing or selling, etc., inefficient life-preservers, etc. . . . .

R. S., s. 4488.  
3 March, 1905, s. 3;  
33 Stat. 1024.

La Bourgogne, 117 F. R. 261, 104 Id. 823; The Pope Catlin, 31 Id. 408; The Thomas Swan, 9 L. R. N. s. 201.

Owner neglecting or refusing to carry life-boats, rafts, life-preservers, etc. . . . .

R. S., s. 4489.  
2 March, 1889, s. 2;  
25 Stat. 1012.  
11 April, 1892; 27  
Stat. 16.

See cases just above.

Barges carrying passengers failing to have fire buckets, axes, etc. . . . .

R. S., s. 4492.

The Scow No. 1, 169 F. R. 717; Transportation Line v. Cooper, 99 U. S. 78, 25 L. ed. 382; United States v. Miller, 26 F. R. 95, 97; The Gretna Green, 20 Id. 901.

Failing to keep on board and to deliver to passengers requesting same, copies of chapters twelve and thirteen of this title . . . . .

R. S., s. 4494.

The Lewellen, 4 Biss. 156.

Failing to keep name of steam vessel painted in designated places . . . . .

R. S., s. 4495.

The Lewellen, *supra*; 37 Int. Rev. Rec. 125; S. T. D. (1892), p. 16.

Customs officer negligently or intentionally failing to require name of vessel to be placed on pilot house or wheel house . . . . .

R. S., s. 4497.

The Joshua Leviness, 9 Ben. 339; 26 A. G. Op. 274.

Persons, etc., owning, etc., steam vessels  
failing to comply with terms of chapter  
thirteen of this title . . . . .

R. S., s. 4499.  
3 March, 1905, s. 4;  
33 Stat. 1025.

The Ben R., 134 F. R. 784; *Hartranft v. Du Pont*, 118 U. S. 223, 225, 30 L. ed. 205; *United States v. Guess*, 48 F. R. 587; *United States v. The Frank Sylvia*, 45 Id. 641, 37 Id. 155; *The Oyster Police Steamers*, 31 Id. 763, 35 Id. 926; *The Pope Catlin*, 31 Id. 408; *The Idaho*, 12 Sawyer, 156, 29 F. R. 187; *The Garden City*, 26 Id. 776; *Pollock v. The Sea Bird*, 3 Id. 573; *The Tug May*, 6 Biss. 243, 5 Id. 449; *The Nashville*, 4 Id. 188; *The Joshua Leviness*, 9 Ben. 339; *United States v. The Manhattan*, 3 Blatch. 270; *The James D. Parker*, 23 Int. Rev. Rec. 66; *The Thomas Swan*, 6 Ben. 42; *The Ranier, Deady*, 438; *United States v. The Laurel*, Newb. 269; *United States v. The Science*, 5 Phila. 257; 25 A. G. Op. 56; S. T. D. 8337.

Penalty for violating any of the provisions  
of chapters twelve and thirteen of this  
title, not otherwise specifically pro-  
vided for . . . . .

R. S., s. 4500.

*United States v. The Frank Sylvia*, 45 F. R. 641; *United States v. Miller*, 26 Id. 95, 99; *United States v. Burlington Co.*, 21 Id. 332; *United States v. Moore*, 2 Bond, 34; S. T. D. 8337, 9316.

*Chapter Fourteen. — Rules of navigation.*

Rules for the prevention of collisions on  
inland waters, and penalty for viola-  
tion . . . . .

7 June, 1897, s. 3;  
30 Stat. 102.

Rules to be established by supervising  
inspectors, and penalty for violation .

7 June, 1897, s. 2;  
30 Stat. 102.

*In re Rapid Transit Ferry Co.*, 124 F. R. 786.

Rules for the prevention of collisions on  
inland waters, and penalty against ves-  
sel for violation . . . . .

7 June, 1897, s. 4;  
30 Stat. 103.

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| Rules to prevent collisions on the Great Lakes, and penalties for violation . .    | 8 Feb., 1895, s. 2;<br>28 Stat. 645.  |
| Owners, agents, etc., failing to report accidents to collectors of customs . . . . | 20 June, 1874, s. 10;<br>18 Stat. 128.  |
| Owner, etc., failing to report probable loss of vessel, etc. . . . .               | 20 June, 1874, s. 11;<br>18 Stat. 128.  |
| Navigating vessel without proper signal lights . . . . .                           | 19 Feb., 1895, s. 3;<br>28 Stat. 672.<br>7 June, 1897, s. 5;<br>30 Stat. 103. |
| Failing to render assistance to vessel in distress . . . . .                       | 4 Sept., 1890, s. 2;<br>26 Stat. 425.   |

Boston Towboat Co. v. Winslow, 76 F. R. 595; The Robert Graham Dun, 70 Id. 270, 63 Id. 167; The Kenilworth, 64 Id. 890.

*Chapter Fifteen. — Reciprocal privileges.*

|   |                                       |
|---|---------------------------------------|
| Opposing an officer of the United States in enforcing certain rules concerning foreign vessels that have violated proclamations . . . . . | 19 June, 1886, s. 17;<br>24 Stat. 82. |
| Persons of British North America violating rules and proclamations of President concerning fishing rights in American waters . . . . .    | 3 March, 1887; 24<br>Stat. 475.       |

## TITLE XLVIII.

### MERCHANT SEAMEN

*Chapter One. — Shipping commissioners.*

|   |                 |
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| Unauthorized person acting as shipping commissioner . . . . . | R. S., s. 4504. |
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United States v. Smith, 95 U. S. 536, 24 L. ed. 517; The Grace Lothrop, 95 U. S. 527, 24 L. ed. 514, 1 Holmes, 342; Burton v. Frye, 139 Mass. 131; United States v. Rose, 14 F. R. 681, 12 Id.

576; *United States v. French*, 14 Phila. 497, 9 F. R. 369; *The Bark Brothers*, 10 Ben. 400; *United States v. The City of Mexico*, 11 Blatch. 489, 7 Ben. 31; *United States v. Idell*, 16 Int. Rev. Rec. 147.

Rules concerning indenture of apprentices  
and penalties for violation . . . . . R. S., s. 4510.  
Vessel carrying person to sea as one of crew  
without agreement . . . . . R. S., s. 4514.  
Master engaging seamen contrary to law . . . . . R. S., s. 4515.

*United States v. The Thomas W. Haven*, 3 F. R. 347; *The Grace Lothrop*, 95 U. S. 527, 24 L. ed. 514, 1 Holmes, 342.

Master engaging seamen in foreign port  
without complying with provisions of  
law . . . . . R. S., s. 4518.  
Master failing to post copy of shipping  
agreement . . . . . R. S., s. 4519.  
Master shipping seamen without articles . . . . . R. S., s. 4521.

Seamen who go on board and go to work as mariners voluntarily, without a valid contract, may be required to perform such services as are necessary for navigation, but they may leave at any port without forfeiting the wages earned, although they cannot require the owner to return them to the port of shipment. *The Occidental*, 101 F. R. 997. Whenever a clause in the articles is ambiguous, the meaning most favorable to the seamen shall prevail, the want of clearness not being their fault. *Wope v. Hemenway*, 1 Sprague, 300, 2 Curtis, 301. Shipping articles providing for a "voyage from Boston to Valparaiso or other ports of the Pacific Ocean, at and from thence home direct, or *via* ports in East Indies or Europe," are not sufficiently definite, and the seamen would not be bound by the articles to any service after reaching Valparaiso. *Id.*; *The Samuel Ober*, 15 F. R. 621. See *Magee v. The Moss*, Gilpin, 219, 226; *Johnson v. Dalton*, 1 Cow. 543; *Bartlett v. Wyman*, 14 Johns. 260. The Act of 20 July, 1790, does not make the written agreement conclusive upon the seamen. They have often been permitted to prove that the shipping articles did not set forth correctly the



agreement; and the courts, without impeaching proofs, will hold to be void such agreements in the articles as are injurious to the seamen. *The Juliana*, 2 Dod. 504; *The Minerva*, 1 Hagg. 347; *Harden v. Gordon*, 2 Mason, 541; *Abbott on Shipp.*, ed. 1830, 435; *The Cypress*, Blatch. & H. 83, 87. Seamen's contracts to ship for the voyage are terminable at the will of the parties on arriving at port by the dismasting of the vessel in a collision. *Thorson v. Peterson*, 9 F. R. 517. Where the shipping articles are silent as to wages, the seaman may prove by parol what wages were stipulated for, or he may claim the highest rate payable at the port of shipment within the three months next preceding the date of the articles. *The Warrington*, Blatch. & H. 335. See *Rollins v. E. O. Stanard*, 4 F. R. 750.

Stipulations operating to the disadvantage of seamen will not be enforced against them by courts of admiralty, unless it appears from extrinsic evidence that the seamen fully understood the stipulations, and received an adequate consideration therefor; as, for example, a stipulation that they will prosecute their suits for wages only in courts of common law, amounting to a waiver of their lien upon the vessel. *The Sarah Jane*, Blatch. & H. 401. A stipulation provided that all *differences* should be referred to arbitration. It was held that when the wages due were agreed upon and demanded, but payment was refused, there was no difference, within the meaning of the stipulation. *Id.* When the seamen after the vessel has put to sea compel the master by threats to enter into new shipping articles at a higher rate of wages, they are void. *Bartlett v. Wyman*, 14 Johns. 260. Originally in the Act of 1790 this and § 4521 were found together. Old cases on this section before the revision are *The Australia*, 3 Ware, 240; *The Atlantic*, Abb. Adm. 451, 470; *Page v. Sheffield*, 2 Curt. 377, 1 Sprague, 285; *Jameson v. Ship Regulus*, 1 Pet. Adm. 212; *Walton v. Ship Neptune*, *Id.* 142; *Wolverton v. Lacey*, 8 Law Rep. N. S. 672.

Shipping commissioner, etc., taking unlawful fees . . . . . R. S., s. 4595.

*Chapter Two. — wages and effects.*

Paying seamen advance wages . . . . . 21 Dec., 1898, s. 24;  
30 Stat. 763.  
26 April, 1904, 33  
Stat. 308.

*Patterson v. Bark Eudora*, 190 U. S. 169, 47 L. ed. 1002, 110 F. R. 430; *The Alnwick*, 132 F. R. 117; *Kenney v. Blake*, 125 Id. 672; *The Kestor*, 110 Id. 432; *The Alexander M. Lawrence*, 101 Id. 135; *United States v. Nelson*, 100 Id. 125; *The Staghound*, 97 Id. 973; *The J. D. Peters*, 78 Id. 368; *The Eclipse*, 53 Id. 276; *The Samuel E. Spring*, 27 Id. 764; *United States v. King*, 23 Id. 138; *The State of Maine*, 22 Id. 734.

Demanding, etc., remuneration for providing seaman with employment . . . . 21 Dec., 1898, s. 24;  
30 Stat. 763.  
26 April, 1904; 33  
Stat. 308.

Falsely claiming to be relative of seaman 21 Dec., 1898, s. 24;  
30 Stat. 763.

Master failing to take charge and account for deceased seaman's effects . . . . . R. S., s. 4540.

Shipping commissioner failing to deliver deceased seaman's effects to district court . . . . . R. S., s. 4543.

*Chapter Three. — Discharge.*

Master discharging seaman in manner other than that provided by law . . . R. S., s. 4549.

*Patterson v. Empire Transportation Co.*, 111 F. R. 931; *The Alexander M. Lawrence*, 101 Id. 135; *The Pennsylvania*, 98 Id. 744; *United States v. French*, 9 Id. 369; *Walsh v. The Louisiana*, 4 Id. 751; *The Bark Brothers*, 10 Ben. 400.

Master failing to deliver account of wages to discharged seaman or shipping commissioner . . . . . R. S., s. 4550.

*The T. F. Whiton*, 10 Ben. 369; *The Mentor*, 4 Mason, 102. See *The Lilian M. Vigus*, 10 Ben. 385; *Ardrey v. Karthaus*, Taney, 379. In cases of the misconduct or negligence of the seamen, reasonable

deductions have been allowed. *Bates v. Seabury*, 1 Sprague, 433; *Brown v. The Neptune*, Gilp. 89; *The Hudson*, 6 F. R. 830; *The Coldstream*, 4 Sawyer, 172. In many cases deductions have been disallowed. *Macpherson v. Blytheswood*, 1 Phila. 546; *Chatfield v. The Wolga*, 3 L. Repr. 387; *Wilson v. The Mary*, Gilp. 31; *Magee v. The Moss*, Id. 219; *Johnson v. The Coriolanus*, Crabbe, 239; *The Saratoga*, 2 Gall. 164; *Pitman v. Hooper*, 3 Sumner, 50; *The Lethe*, Bee, 423. See *Brice v. The Nancy*, Id. 429; *Hart v. The Littlejohn*, 1 Pet. Adm. 115; *Howland v. The Lavinia*, Id. 213; *Pedro v. Allen*, 1 Lowell, 435; *The Hudson*, Olc. 396. As to a minor, see *The Lucy Anne*, 3 Ware, 253. The provisions of this section do not apply to cases within the provisions of § 4604. *Stevenson v. Hare*, 2 Sawyer, 583. See cases under § 4549.

Master failing to give discharged seaman  
certificate of discharge . . . . . R. S., s. 4551.

See cases under § 4549.

*Chapter Four. — Protection and relief.*

Owner, master, etc., failing to appear or to  
produce books, etc., before shipping  
commissioner . . . . . R. S., s. 4555.

Master failing to apply for surveyors upon  
complaint that ship is unseaworthy . . . R. S., s. 4556.  
21 Dec., 1898, s. 7;  
30 Stat. 757.

*The C. F. Sargent*, 95 F. R. 179; *United States v. Givings*, 1 Sprague, 75; *The Hibernia*, Id. 78; *United States v. Ashton*, 2 Sumner, 13; *The William Harris*, 1 Ware, 367.

Sending, etc., an American ship to sea in  
an unseaworthy condition . . . . . R. S., s. 4561.  
21 Dec., 1898, s. 11;  
30 Stat. 758.

21 A. G. Op. 26.

Master refusing to pay charges of inspec-  
tion, and wages . . . . . R. S., s. 4563.

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| Master or owner failing to provide sufficient quantity of stores . . . . . | R. S., s. 4564.<br>21 Dec., 1898, s. 12;<br>30 Stat. 758. |
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Where the articles mentioned can be procured, no equivalents can be substituted. But in ports where they cannot be obtained, the law admits equivalents of other good and wholesome food in place of that damaged or consumed. *Sundry Mariners v. The Washington*, 1 Pet. Adm. 219. After the requisite provisions are taken in, the master is the sole judge of their expenditure; and in case of a probably long voyage or accidental diminution in quantity, he may abridge the usual allowance, and mariners cannot complain where equivalents are substituted. *Id.* To entitle the crew to the remedy provided, the neglect or omission of the master to take on board the required provisions, and the short allowance must be shown. *Ferrara v. The Talent*, Crabbe, 216; *The Elizabeth v. Rickers*, 2 Paine, 291; Blatch. & H. 195; *Piehl v. Balchen*, Olc. 24; *The John L. Dimmick*, 3 Ware, 196; *The Childe Harold*, Olc. 275. "To subject the master or owners to the extra wages, the crew must be put upon short allowance, by which I should understand that there must be some order or command given to that effect, or some gross negligence in the master. An accidental or unintentional deficiency in weight would not subject the master or owner to the penalty." *The Elizabeth v. Rickers*, *supra*, 298. An exception will lie for the insufficiency of an answer not setting forth specifically whether the vessel shipped the statutory quantity and quality of provisions, where a libel claims extra wages. *Id.* The navy ration is the usual standard of full allowance; and five pounds a week to each man was held a short allowance. *The Mary Paulina*, 1 Sprague, 45; *The Mary*, *infra*. In *The Harriet Bee*, 80, the court "gave only one-third of the additional wages for a short allowance of one of the articles. No reasons are assigned, and the case is a solitary one. I am unable to follow that precedent. The statute is in the disjunctive, and in my opinion does not admit of such a construction, but gives one day's pay for a short allowance of any of the specified articles." *The Mary Paulina*, 1 Sprague, 45, 47;

*Collins v. Wheeler*, Id. 188; *The Mary*, 1 Ware, 454, 459. It is no defense to a claim for double wages that flour was furnished as a substitute. It is important to have food that does not require cooking, especially in case of wreck or bad weather. *Foster v. Sampson*, 1 Sprague, 182. As to whether the fact that it is impracticable to procure the required provisions is a defense to a claim of double wages, Judge Sprague says, "The point has never been decided by the Supreme Court, or by any circuit court; and the only case in which the defense was sustained in the district courts, is that in *The Washington*, 1 Pet. Adm. 219; while in *The Harriet*, Bee, 80, the defense was not sustained. In the *Mary*, 1 Ware, 459, on the other hand, the reasoning of the court sustains the decision in *Peters*." Id. 183.

An action for double wages was held not to lie because the crew were fed on unwholesome food. For such a wrong the seaman must resort to a special action for damages against the master. *The Childe Harold*, *supra*. It was held that a seaman shipping in a foreign port may maintain a suit for double wages. *The New Jersey*, 1 Pet. Adm. 223. The case of a Swedish vessel with an inadequate supply of provisions is treated in *The Amalia*, 2 Haskell, 406, 3 F. R. 652.

Master failing to provide suitable provisions and water, after complaint . . . R. S., s. 4565.

Master refusing seaman permission to go ashore to make complaint . . . R. S., s. 4567.

*Morris v. Cornell*, 1 Sprague, 62; *Knowlton v. Boss*, Id. 163; *Jordan v. Williams*, 1 Curtis, 69.

Owner failing to provide vessel with slop chest . . . . . 26 June, 1884, s. 11;  
23 Stat. 56.  
19 June, 1886, s. 13;  
24 Stat. 82.

*The Edwin*, 23 F. R. 256.

Owner or master failing to provide vessel with medicines, etc. . . . . R. S., s. 4570.

The Iroquois, 194 U. S. 240, 48 L. ed. 955; *United States v. Elliott*, 25 Int. Rev. Rec. 319; *Petersen v. Cunningham Co.*, 77 F. R. 211; *The J. D. Peters*, 78 Id. 368, 377; *The Rence*, 46 Id. 805; *The City of Alexandria*, 17 Id. 390; *The Centennial*, 10 Id. 397; *Peterson v. The Chandos*, 4 Id. 645; *Longstreet v. The R. R. Springer*, Id. 671, 672; *Harden v. Gordon*, 2 Mason, 541; *Freeman v. Baker*, Blatch. & H. 372; *The Grace Darling*, 2 Haskell, 278, 288; *Holmes v. Hutchinson*, Gilp. 447.

Master neglecting to serve out lime juice,  
etc. . . . . R. S., s. 4570.

See cases just above.

Master failing to keep on board and use  
proper weights and measures . . . . R. S., s. 4571.

Owner or master failing to provide warm  
clothing and room for use of seamen in  
cold weather . . . . . R. S., s. 4572.  
21 Dec., 1898, s. 15-  
30 Stat. 759.

*The Ada McKay*, 99 F. R. 1002; *The C. F. Sargent*, 95 Id. 179;  
*The A. M. Baxter*, 93 Id. 479.

Rules concerning list of ship's crew, and  
penalties for violation . . . . . R. S., s. 4575.

*The Richard Vaux*, 20 F. R. 654; *The Elvine*, 19 Id. 528; *Lamb v. Briard*, Abb. Adm. 367; *The Schooner Eagle*, Olc. 232; *Hutchinson v. Coombs*, Ware, 65; *Campbell v. Steamer Uncle Sam*, McAll. 77, 80; *Atlantic*, Abb. Adm. 451; *Miner v. Harbeck*, Id. 546; *Snow v. Wope*, 2 Curtis, 301, 1 Sprague, 300.

Master of foreign-bound vessel failing to  
produce person on ship's list of crew . . R. S., s. 4576.  
3 March, 1897, s. 3;  
29 Stat. 688.

*United States v. Hatch*, 1 Paine, 336; *Montell v. United States*, Taney, 24; *United States v. Parsons*, 1 Lowell, 107; *The Grace Darling*, 2 Haskell, 278, 288; *Case of the Chinese Waiter*, 13 F. R. 289; *Tingle v. Tucker*, Abb. Adm. 519.

Master of United States vessel refusing to  
receive or transport indigent seaman  
from foreign country to United States .

R. S., s. 4578.  
26 June, 1884, s. 9;  
23 Stat. 55.  
19 June, 1886, s. 18;  
24 Stat. 83.

Matthews v. Offley, 3 Sumner, 115; 7 A. G. Op. 722; 4 Id. 185;  
3 Id. 683, 685; 2 Id. 468.

Rules concerning extra payment to sea-  
man on discharge in foreign port in  
case of sale of vessel and penalties for  
violation . . . . .

R. S., s. 4582.  
26 June, 1884, s. 5;  
23 Stat. 54.  
21 Dec., 1898, s. 17;  
30 Stat. 759.

Where, by the mutual consent of a seaman and the mate, the mate while in command assisted the seaman to leave the vessel and paid his fare on the railroad to the nearest hospital, it was held that the seaman was not guilty of desertion, because the mate was *pro hac vice* the master, and that the seaman was entitled to the extra wages. The *Caroline E. Kelley*, 2 Abb. U. S. 160, 7 Phila. 570. The words "foreign country" refer to a port or place abroad intermediate between the termini of the voyage. *Pray's Case*, 10 Ct. Cl. 453. If the three months' pay be not given to the consul it is recoverable by the seaman in his libel. *Orne v. Townsend*, 4 Mason, 541, 549; *Emerson v. Howland*, 1 Id. 45. If the seaman is named as an American citizen on the master's list of the crew, it is no objection to the recovery of the extra wages that his name is omitted as an American citizen in the list of the crew certified from the collector's office under § 4588. *Orne v. Townsend*, *supra*. The burden is on the master to show that the three months' extra wages have been paid. *Id.* A seaman in the whaling service discharged abroad may recover the three months' extra wages. *Bates v. Seabury*, Sprague, 433. This statute applies only to a voluntary sale and to a strictly voluntary discharge, and not to a sale or discharge rendered unavoidable by the

perils of the seas. *The Dawn*, Daveis, 121, 1 Ware, 485, 2 Id. 126; *Poole v. Welsh*, Gilpin, 193; 1 A. G. Op. 148; 2 Id. 418. Where the sale is rendered necessary by shipwreck or other casualty, it is doubtful whether the statute applies; but it does apply to a voluntary sale on account of the vessel's unseaworthiness, rendered so by natural wear or by her imperfect condition when sent to sea. "There seems to be no ground for a distinction, so far as the mariner is concerned, between a sale for the purpose of positive profit and one for the purpose of avoiding a loss." *Wells v. Meldrum*, Blatch. & H. 342, 344. See *Hoffman v. Yarrington*, 1 Lowell, 168. The statute regards that part of the extra wages intended for the crew, as their wages, and the master is directly liable to them therefor, if he has not deposited it with the consul. *Wells v. Meldrum*, Blatch. & H. 342, criticising *Ogden v. Orr*, 12 Johns. 143. This Act is silent as to seamen liable by their contract to be discharged in a foreign country, though mentioned in the Act of 1840. "Taking the whole law together, it seems reasonable to understand it as meaning that all those shall be brought home who by their contract are entitled to be brought home, unless, etc. I cannot readily believe that the intent of the law is that the men who have freely, and for reasons satisfactory to themselves, agreed on a month's voyage, to end abroad, are to be paid three months' wages, and that the United States is to be paid for still another month unless the consul shall remit it." *United States v. Parsons*, 1 Lowell, 107, 109. When the facts are that a vessel needing repairs from a sea peril has been condemned, and the master has acted in good faith, and his conduct has been such as a prudent owner would have adopted in like circumstances had he been uninsured, the owner is not liable to extra wages upon selling the vessel, as the case comes within § 4583. *Hoffman v. Yarrington*, 1 Lowell, 168. Seamen of foreign birth in our vessels are within this section. *Pray's Case*, 10 Ct. Cl. 453. But it has been held that American seamen on foreign vessels must look to the laws of the country under whose flag they sail. 2 A. G. Op. 448. As to a case involving the maritime code of Sweden, see *The Adolph*, 7 F. R. 501. When the certified list of the crew does not designate their nationality, it is to be taken, as



against the owners, that the seamen were American citizens, although some were foreigners. *Pray's Case*, *supra*. In this case it was held that according to the description of the voyage and the provisions in the articles as to discharge, Liverpool being an intermediate port in the voyage, a discharge there would not take the case out of the provisions of this section; and that though the seamen might waive their right to the payment of two months' wages, the United States would be entitled to the payment of the one month's wages. Other cases decided under the old statute are *Miner v. Harbeck*, Abb. Adm. 546; *Gove v. Judson*, 19 F. R. 523; *Boulton v. Moore*, 11 Biss. 500, 14 F. R. 922, 925; *Heynsohn v. Merriman*, 1 Id. 728; *The Wenonah*, 1 Haskell, 606; *Dustin v. Murray*, 5 Ben. 10; *Brown v. The Independence*, Crabbe, 54; *Henop v. Tucker*, 2 Paine, 151, 156; *The Saratoga*, 2 Gall. 164; *Wilson v. Borstel*, 73 Maine, 273; *Luscom v. Osgood*, 1 Sprague, 83; 11 A. G. Op. 458; 2 Id. 256; 1 Id. 593. See *The Zack Chandler*, 10 Biss. 372, 7 F. R. 684; *Worth v. The Lioness*, 3 Id. 922; *Gallagher v. Murray*, 10 Ben. 290; *Drew v. Pope*, 2 Sawyer, 72.

*Chapter Five. — Offenses and punishments.*

Offenses of seamen or apprentices; desert-  
ing ship . . . . .

R. S., s. 4596.  
21 Dec., 1898, s. 19;  
30 Stat. 760.

As to foreign vessels, see *United States v. McArdle*, 2 Sawyer, 367; *United States v. Sullivan*, 43 F. R. 602, 604. As to commencement of service, see *The Ida G. Farren*, 127 F. R. 766; *Tucker v. Alexandroff*, 183 U. S. 424, 46 L. ed. 264. As to desertion, see *Robertson v. Baldwin*, 165 U. S. 275, 41 L. ed. 715; *The Charles K. Schull*, 166 F. R. 374; *The Ida G. Farren*, *supra*; *In re Simpson*, 119 Id. 620; *The Mermaid*, 115 Id. 13, 104 Id. 301; *Johnston v. Mowatt*, 115 Id. 844; *The South Portland*, 111 Id. 767; *The Victorian*, 88 Id. 797; *The Occidental*, 87 Id. 485; *The W. F. Babcock*, 85 Id. 978; *The Laura Madsen*, 84 Id. 362; *United States v. Bain*, 40 Id. 455, 5 Id. 192; *United States v. Buckley*, 12 Sawyer, 508, 31 F. R. 804; *The Lizzie M. Dun*, 30 Id. 927; *Brink v. Lyons*, 18 Id. 605; *The Mary C. Conery*, 9 Id. 222; *The City of Mexico*, 28 Id.

207; *The San Marcos*, 27 Id. 567; *The Frank C. Barker*, 19 Id. 332; *Brink v. Lyons*, 18 Id. 605; *Johnson v. Blanchard*, 7 Id. 597; *Olsen v. The Edwin Post*, 6 Id. 314; *The Galina*, Id. 927; *The Ericson*, 3 Sawyer, 559; *Coffin v. Weld*, 2 Lowell, 81; *Scott v. Rose*, Id. 381; *Coffin v. Jenkins*, 3 Story, 113; *The Quintero*, 1 Lowell, 38; *The Gem*, Id. 180; *Knowlton v. Boss*, 1 Sprague, 163; *Cloutman v. Tunison*, 1 Sumner, 373; *The Martha*, Blatch. & H. 151; *Freeman v. Baker*, Id. 372; *The Merrimac*, 1 Ben. 490; *The Catawanteak*, 2 Id. 189; *The John Martin*, 2 Abb. U. S. 172, 178; *Piehl v. Balchen*, Olc. 24; *The Philadelphia*, Id. 216; 14 A. G. Op. 325.

Refusing to join vessel or proceed to sea,  
etc. . . . .

R. S., s. 4596.  
21 Dec., 1898, s. 19;  
30 Stat. 760.

See cases just above.

Willfully disobeying any lawful com-  
mand, etc. . . . .

R. S., s. 4596.  
21 Dec., 1898, s. 19;  
30 Stat. 760.

*Eldridge v. Atlas Steamship Co.*, 134 N. Y. 187; *The Thrasher*, 173 F. R. 258; *In re Simpson*, 119 Id. 620; *The South Portland*, 111 Id. 767; *The Superior*, 22 Id. 927; *The Alps*, 19 Id. 139; *Marsland v. The Yosemite*, 18 Id. 331; *The Paul Revere*, 10 Id. 156, 160; *Smith v. The J. C. King*, 3 Id. 302; *The Antioch*, 6 Sawyer, 328, 11 F. R. 165; *United States v. McArdle*, 2 Sawyer, 367; *Gladding v. Constant*, 1 Id. 73; *The Olive Chamberlain*, 1 Sprague, 9; *The Mentor*, 4 Mason, 84; *Orne v. Townsend*, Id. 541; *The Almatia*, Deady, 473; *The Pioneer*, Id. 72; *Smith v. Treat*, 2 Ware, 266; *Benton v. Whitney*, Crabbe, 417; *Airey v. The Ann C. Pratt*, 1 Curtis, 395; *Thorne v. White*, 1 Pet. Adm. 168; *Wood v. The Nimrod*, Gilpin, 83; *The Cornelia Amsden*, 5 Ben. 315; *Humphreys v. The America*, Bee, 237; *Cloutman v. Tunison*, 1 Sumner, 373; *Macomber v. Thompson*, Id. 384; *Hayes v. The J. J. Wickwire*, 7 Phila. 594; *The Wm. Cummings*, Id. 598; *The John Martin*, 1 Brown, Adm. 149; *Hill v. The Triumph*, 12 Fed. Cas. 178.

Continuing to disobey any lawful command . . . . . R. S., s. 4596.  
21 Dec., 1898, s. 19;  
30 Stat. 760.

See cases just above.

Assaulting master or mate . . . . . R. S., s. 4596.  
21 Dec., 1898, s. 19;  
30 Stat. 760.

See notes to § 292.

Damaging vessel or embezzling stores . . . . . R. S., s. 4596.  
21 Dec., 1898, s. 19;  
30 Stat. 760.

Seamen's wages, 1 Pet. Adm. 239; *Alexander v. Galloway*, Abb. Adm. 261; *Joy v. Allen*, 2 Woodb. & M. 303; *Edwards v. Sherman*, Gilpin, 461. See *Anderson v. The Solon*, Crabbe, 17; *Parker v. The Calliope*, 2 Pet. Adm. 272; *Knap v. The Eliza*, 1 Id. 200. "Where the embezzlement has arisen from the fault, fraud, connivance, or negligence of any of the crew, they are bound to contribute to it, in proportion to their wages; where the embezzlement is fixed on an individual, he is *solely* responsible; where the embezzlement is clearly shown to have been made by the crew, but the particular offenders are unknown, and from the circumstances of the case strong presumptions of guilt apply to the whole crew, all must contribute; but where no fault, fraud, connivance, or negligence is proved against the crew, and no reasonable presumption is shown against their innocence, the loss must be borne exclusively by the owner or master. In no case are the innocent part of the crew to contribute for the misdemeanors of the guilty; and further, in a case of uncertainty, the burthen of the proof of innocence does not rest on the crew; but the guilt of the parties is to be established beyond all reasonable doubt, before the contribution can be demanded." *Spurr v. Pearson*, 1 Mason, 104, 115. But see *Sullivan v. Ingraham*, Bee, 182; *Crammer v. The Fair American*, 1 Pet. Adm. 242.

- Smuggling, etc. . . . . R. S., s. 4596.  
21 Dec., 1898, s. 19;  
30 Stat. 760.
- United States *v.* Claffin, 13 Blatch. 178, 184; Scott *v.* Russell, Abb. Adm. 258; Sheppard *v.* Taylor, 5 Pet. 675, 8 L. ed. 269; The Langdon Cheves, 2 Mason, 58; The Mary, 1 Sprague, 204. See § 3082.
- Refusing to do or doing certain acts in willfull breach of duty or by reason of drunkenness . . . . . R. S., s. 4602.
- Boarding vessel before arrival . . . . . R. S., s. 4606.  
31 March, 1900; 31 Stat. 58.
- United States *v.* Sullivan, 43 F. R. 602; United States *v.* Anderson, 10 Blatch. 226; 25 A. G. Op. 51.
- Soliciting seaman as lodger . . . . . R. S., s. 4607.  
13 April, 1904; 33 Stat. 174.
- Master to enforce provision against carrying sheath knives on vessels . . . . . R. S., s. 4608.
- Master, etc., inflicting corporal punishment that is forbidden by law . . . . . R. S., s. 4611.  
21 Dec., 1898, s. 22;  
30 Stat. 761.
- Dorrell *v.* Schwerman, 111 F. R. 209; Stout *v.* Weedon, 95 Id. 1001; The Stacey Clarke, 54 Id. 533; United States *v.* Trice, 30 Id. 490; Riley *v.* Allen, 23 Id. 46; Shorey *v.* Rennell, 1 Sprague, 507; Saunders *v.* Buckup, Blatch. & H. 264; Forbes *v.* Parsons, Crabbe, 283; Schelter *v.* York, Id. 449; Payne *v.* Allen, 1 Sprague, 304; Carleton *v.* Davis, 2 Ware, 225; Bangs *v.* Little, 1 Id. 506. See notes to § 291.
- Detaining clothing of seaman unlawfully 18 Feb., 1895; 28 Stat. 667.  
11 April, 1904; 33 Stat. 168.
- The J. D. Peters, 78 F. R. 368, 372; United States *v.* Younger, 92 Id. 672.

## TITLE L

## THE CENSUS

Receiving fee, etc., for securing appointment, etc., of another . . . . . 3 March, 1899, s. 20;  
30 Stat. 1020.

Supervisor or other employee refusing or neglecting to perform duties enjoined, or making false returns, etc. . . . . 3 March, 1899, s. 21;  
30 Stat. 1020.

Ching *v.* United States, 118 F. R. 538; United States *v.* Moriarity, 106 Id. 886; United States *v.* Stevens, 44 Id. 141.

Refusing information to enumerator . . . 3 March, 1899, s. 22;  
30 Stat. 1020.

## TITLE LI

COMMON CARRIERS OF INTERSTATE AND FOREIGN  
COMMERCE*Chapter One. — Regulations of transportation.*

Making unreasonable or unjust charge for transportation of passengers or property 29 June, 1906, s. 1;  
34 Stat. 584.

This section was amended by the Act of April 13, 1908, c. 143 (35 St. 60).

American Express Co. *v.* United States, 212 U. S. 522, 53 L. ed. 635, 161 F. R. 606; New York Cent. R. Co. *v.* United States, 212 U. S. 481, 53 L. ed. 613; New York Cent. R. Co. *v.* United States, Id. 500, 53 L. ed. 624; Chicago & Alton R. Co. *v.* United States, 212 Id. 563, 53 L. ed. 653.

Free transportation of passengers forbidden . . . . . 29 June, 1906, s. 1;  
34 Stat. 584.

American Express Co. *v.* United States, *supra*; United States *v.* Clark, 164 F. R. 75; United States *v.* Williams, 159 Id. 310; Louisville & Nashville R. Co. *v.* Mottley, 211 U. S. 149, 53 L. ed. 126, reversing 150 F. R. 406; *In re* Charge to Grand Jury, 66 Id. 146; *In re* Huntington, 68 Id. 881.

Railroads not to carry products in which  
interested . . . . .

29 June, 1906, s. 1;  
34 Stat. 585.

United States *v.* Delaware & Hudson Co., 213 U. S. 366, 53  
L. ed. 836, 164 F. R. 215.

Railroads to construct switches and to  
furnish cars to shippers . . . . .

29 June, 1906, s. 1;  
34 Stat. 585.

United States *v.* Baltimore & O. R. R. Co., 165 F. R. 113.

Making of special rate or giving of rebate  
unlawful . . . . .

4 Feb., 1887, s. 2;  
24 Stat. 379.  
2 March, 1889, s. 2;  
25 Stat. 857.

American Union Coal Co. *v.* Pennsylvania R. Co., 159 F. R. 278;  
Pennsylvania R. Co. *v.* International Coal Co., 173 Id. 1; Interstate  
Commerce Com. *v.* Alabama Midland R. Co., 168 U. S. 144, 42 L.  
ed. 414; Wight *v.* United States, 167 Id. 512, 42 L. ed. 258; Inter-  
state Commerce Com. *v.* Baltimore & O. R. Co., 145 Id. 263, 36 L.  
ed. 699; Lundquist *v.* Grand Trunk R. Co., 121 F. R. 915; United  
States *v.* Norfolk & W. R. Co., 114 Id. 682, 109 Id. 831; Gulf R. Co.,  
*v.* Miami Co., 86 Id. 407; United States *v.* De Coursey, 82 Id. 302;  
Augusta R. Co. *v.* Wrightsville R. Co., 74 Id. 522; United States *v.*  
Hanley, 71 Id. 672; Bigbee Packet Co. *v.* Mobile R. Co., 60 Id.  
545; United States *v.* Egan, 47 Id. 112; Cowan *v.* Bond, 39 Id. 54;  
United States *v.* Tozer, Id. 369.

Undue preferences to persons, localities,  
and traffic prohibited . . . . .

4 Feb., 1887, s. 3;  
24 Stat. 380.  
2 March, 1889, s. 2;  
25 Stat. 857.

American Express Co. *v.* United States, 212 U. S. 522, 53 L. ed.  
635; Chesapeake R. Co. *v.* Standard Lumber Co., 174 F. R. 107;  
United States *v.* Oregon R. Co., 159 F. R. 975. See cases just  
above; also 3 Federal Statutes Annotated, 817-823.

Charge for short haul not to be more than  
for long haul . . . . .

4 Feb., 1887, s. 4;  
24 Stat. 380.  
2 March, 1889, s. 2;  
25 Stat. 857.

See 3 Federal Statutes Annotated, 823-827.

Pooling of freight or earnings with others  
prohibited . . . . .

4 Feb., 1887, s. 5;  
24 Stat. 380.  
2 March, 1889, s. 2;  
25 Stat. 857.

*In re* Pooling Freights, 115 F. R. 588; *United States v. Joint Traffic Association*, 171 U. S. 505, 43 L. ed. 259, 89 F. R. 1020, 76 Id. 895.

Charge for joint interchangeable mileage  
or tickets to be uniform . . . . .

8 Feb., 1895: 28  
Stat. 643.  
2 March, 1889, s. 2;  
25 Stat. 857.

*Interstate Commerce Com. v. Baltimore R. Co.*, 145 U. S. 263, 275,  
36 L. ed. 703.

Willful failure to file and publish schedules  
of rates and fares . . . . .

29 June, 1906, s. 2;  
34 Stat. 587.

*Great Northern R. Co. v. United States*, 208 U. S. 452, 52 L. ed. 567, 155 F. R. 945, 151 Id. 84; *United States v. Illinois Terminal R. Co.*, 168 F. R. 546; *New York Cent. & H. R. Co. v. United States*, 166 Id. 267, 270; *United States v. Chicago R. Co.*, 163 Id. 114; *Meeker v. Lehigh Valley R. Co.*, 162 Id. 354; *Baltimore & O. R. Co. v. Hamburger*, 155 Id. 849; *United States v. Delaware, L. & W. R. Co.*, 152 Id. 269; *United States v. New York Cent. & H. R. Co.*, 146 Id. 298; *Fisher v. Great Northern R. Co.*, 49 Wash. 205; *Georgia R. Co. v. Creety*, 63 S. E. Rep. 528.

Willful failure to observe schedules of  
rates and fares published until changed  
according to law . . . . .

29 June, 1906, s. 2;  
34 Stat. 587.

See cases just above.

- Carrier not to engage in interstate commerce until schedule of rates and fares is filed; nor to charge different rates than those in schedule; nor refund any portion of rates and fares. . . . . 2 March, 1889, s. 2;  
25 Stat. 857.  
29 June, 1906, s. 2;  
34 Stat. 587.

See cases cited above under this Title.

- Combinations to prevent continuous carriage of freights . . . . . 4 Feb., 1887, s. 7;  
24 Stat. 382.  
2 March, 1889, s. 2;  
25 Stat. 857.

Toledo R. Co. *v.* Pennsylvania Co., 54 F. R. 730; *United States v. Fowkes*, 53 Id. 13; *Seibels v. Railway Co.*, 80 S. C. 133, 142. See cases cited above under this Title.

- Punishment for violations of interstate commerce law, to which no specific penalty is attached . . . . . 2 March, 1889, s. 2;  
25 Stat. 857.

See cases cited above under this Title.

- Unlawful to offer or give, or to solicit or receive, rebate for property transported 29 June, 1906, s. 2;  
34 Stat. 587.

See cases cited above under this Title.

- Carrier receiving or accepting compensation as rebate for property transported 29 June, 1906, s. 2;  
34 Stat. 588.

- False billing, false classification, or false weighing of property transported . . 2 March, 1889, s. 2;  
25 Stat. 858.  
19 Feb., 1903, s. 1;  
32 Stat. 847.

*United States v. Michigan Cent. R. Co.*, 122 F. R. 544; *Davis v. United States*, 104 Id. 136; *In re Belknap*, 96 Id. 614; *United States v. Hanley*, 71 Id. 672; *United States v. Howell*, 56 Id. 21.



Obtaining transportation at less than regular rates by means of false billing, false classification, or false representations . 2 March, 1889, s. 2;  
25 Stat. 858.  
19 Feb., 1903, s. 1;  
32 Stat. 847.

United States *v.* New York Cent. R. Co., 212 U. S. 509, 53 L. ed. 629, 157 F. R. 293; United States *v.* Bunch, 165 Id. 736; Standard Oil Co. *v.* United States, 164 Id. 376; Chicago, St. P. & O. R. Co. *v.* United States, 162 Id. 835; United States *v.* Wells-Fargo Express Co., 161 Id. 606; Camden Iron Works *v.* United States, 158 Id. 561.

Shipper inducing discrimination in rates 2 March, 1889, s. 2;  
25 Stat. 858.  
19 Feb., 1903, s. 1;  
32 Stat. 847.

Atchison R. Co. *v.* United States, 170 F. R. 250; United States *v.* Standard Oil Co., Id. 988; Wisconsin Cent. R. Co. *v.* United States, 169 Id. 76; United States *v.* Atchison R. Co., 163 Id. 111.

Act of officer or agent to be also deemed  
act of corporation . . . . . 29 June, 1906, s. 2;  
34 Stat. 587.

*Chapter Two. — Interstate Commerce Commission.*

Punishment for refusal to testify before  
Commission . . . . . 11 Feb., 1893, s. 1;  
27 Stat. 443.

Harriman *v.* Interstate Commerce Com., 211 U. S. 407, 53 L. ed. 253; Interstate Commerce Com. *v.* Baird, 194 Id. 25, 45, 48 L. ed. 860; Brown *v.* Walker, 161 Id. 591, 40 L. ed. 819; Interstate Commerce Com. *v.* Brimson, 154 Id. 447, 38 L. ed. 1047, reversing 53 F. R. 476; Counselman *v.* Hitchcock, 142 U. S. 547, 35 L. ed. 1110; United States *v.* Armour & Co., 142 F. R. 808; Interstate Commerce Com. *v.* Philadelphia R. Co., 123 Id. 969; *In re* Pooling Freights, 115 Id. 588; Foot *v.* Buchanan, 113 Id. 156; United States *v.* Price, 96 Id. 960; United States *v.* Bell, 81 Id. 830, 848; Brown *v.* Walker, 70 Id. 46; United States *v.* James, 60 Id. 257; *In re* Peasley, 44 Id. 271.

## Failure of carrier to obey order of the

Commission . . . . . 29 June, 1906, ss. 4,  
5; 34 Stat. 589,  
591.

Philadelphia R. Co. *v.* Interstate Commerce Com., 174 F. R. 687;  
New York R. Co. *v.* Interstate Commerce Com., 168 Id. 131; Atlantic  
Coast Line R. Co. *v.* Macon Grocery Co., 166 Id. 206, reversing 163  
Id. 738; Great Northern R. Co. *v.* Kalispell Lumber Co., 165 Id. 25;  
Stickney *v.* Interstate Commerce Com., 164 Id. 638; Southern Pac.  
Term. Co. *v.* Interstate Commerce Com., 166 Id. 134; Meeker *v.*  
Lehigh Valley R. Co., 162 Id. 354; Howard Supply Co. *v.* Chesapeake  
R. Co., Id. 188; M. C. Kiser Co. *v.* Central of Georgia R. Co., 158  
Id. 193; Potlatch Lumber Co. *v.* Spokane Falls R. Co., 157 Id. 588;  
Shelton *v.* St. Louis R. Co., 131 Mo. App. 560. See cases cited in  
3 Federal Statutes Annotated, 844-849.

## Failure of carrier to file annual reports

required by Commission . . . . . 29 June, 1906, s. 7;  
34 Stat. 593.

Failure of carrier to keep accounts and  
records required by Commission; agent  
divulging information . . . . .

29 June, 1906, s. 7;  
34 Stat. 594.

Willfully making false entries in accounts,  
or keeping unauthorized accounts . .

29 June, 1906, s. 7;  
34 Stat. 594.

See Act of Feb. 25, 1909, c. 193 (35 St. 648).

*Chapter Three. — Safety appliances on railroad cars.*Common carrier using locomotive engine  
not equipped with a power driving-  
wheel brake, etc. . . . .

2 March, 1893, s. 1;  
27 Stat. 531.  
1 April, 1896; 29  
Stat. 85.

See Act of May 2, 1903, c. 976 (32 St. 943). New England R.  
Co. *v.* Conroy, 175 U. S. 323, 342, 44 L. ed. 181; United States *v.*  
Rio Grande Western R. Co., 174 F. R. 399; Pacific Coast R. Co. *v.*  
United States, 173 Id. 448; United States *v.* Baltimore & O. R. Co.,

170 Id. 456; *United States v. Southern Pac. Co.*, 169 Id. 407; *Belt R. Co. v. United States*, 168 Id. 542; *United States v. Erie Co.*, 166 Id. 352; *United States v. Chicago R. Co.*, 162 Id. 775; *United States v. Union Stock Yards Co.*, 161 Id. 919.

Common carrier hauling, etc., cars used  
in moving interstate traffic not equipped  
with automatic couplers . . . . . 2 March, 1893, s. 2;  
27 Stat. 531.

See Act of March 2, 1903, c. 976 (32 St. 943). *Schlemmer v. Buffalo R. & P. Co.*, 205 U. S. 1, 51 L. ed. 681; *Johnson v. Southern Pac. Co.*, 196 U. S. 1, 49 L. ed. 363, 117 F. R. 462; *Southern R. Co. v. Carson*, 194 U. S. 136, 48 L. ed. 907; *United States v. International R. Co.*, 174 F. R. 638; *United States v. Chicago R. Co.*, 173 Id. 684; *Wabash R. Co. v. United States*, 172 Id. 864; *United States v. Illinois Cent. R. Co.*, 170 Id. 542; *United States v. Southern Pac. Co.*, 169 Id. 407; *United States v. Louisville R. Co.*, 167 Id. 306; *United States v. Nevada County R. Co.*, Id. 695; *United States v. Atchison R. Co.*, Id. 696; *United States v. Southern Pac. Co.*, Id. 699; *United States v. Erie R. Co.*, 166 Id. 352; *United States v. Southern R. Co.*, 164 Id. 347; *United States v. Atchison R. Co.*, 163 Id. 517; *United States v. Denver R. Co.*, Id. 519; *United States v. Louisville R. Co.*, 162 Id. 185; *United States v. Chicago R. Co.*, Id. 775; *United States v. Union Stock Yards Co.*, 161 Id. 919; *United States v. Philadelphia R. Co.*, 160 Id. 696; *St. Louis R. Co. v. Delk*, 158 Id. 931; *United States v. Great North. R. Co.*, 145 Id. 438; *United States v. Northern Pac. Term. Co.*, 144 Id. 861; *United States v. Chicago R. Co.*, 143 Id. 353; *Denver R. Co. v. Arrighi*, 141 Id. 67; *United States v. Southern R. Co.*, 135 Id. 122; *Rosney v. Erie R. Co.*, Id. 311; *United States v. Geddes*, 131 Id. 452; *Chicago R. Co. v. Voelker*, 129 Id. 522, reversing 116 Id. 867; *Gilbert v. Burlington R. Co.*, 128 Id. 529; *Winkler v. Philadelphia & R. R. Co.*, 4 Penn. (Del.) 80, 387; *Larabee v. New York, New Haven, & H. R. Co.*, 182 Mass. 348; *Turritin v. Chicago, St. Paul, & Minn. R. Co.*, 95 Minn. 408, 411; *Mobile, Jackson, & K. C. R. Co. v. Bromberg*, 141 Ala. 258; *Kansas City, Memphis, & B. R. Co. v. Flipppo*, 138 Id. 487.

Common carrier using car in interstate  
commerce not equipped with proper  
grab-irons . . . . .

2 March, 1893, ss. 4,  
6; 27 Stat. 531.

See Act of March 2, 1903, c. 976 (32 St. 943). *Atchison R. Co. v. United States*, 172 F. R. 194; *Chicago, B. & Q. R. Co. v. United States*, 170 Id. 556; *United States v. Baltimore & O. R. Co.*, Id. 456; *United States v. Illinois Cent. R. Co.*, Id. 542; *Atlantic Coast Line R. Co. v. United States*, 168 Id. 175, 153 Id. 918; *United States v. Boston & M. R. Co.*, 168 Id. 148; *Chicago & N. W. R. Co. v. United States*, Id. 236; *United States v. Wheeling R. Co.*, 167 Id. 198; *United States v. Erie R. Co.*, 166 Id. 352; *United States v. Illinois Cent. R. Co.*, Id. 997; *St. Louis & Iron Mountain R. v. Taylor*, 210 U. S. 281, 52 L. ed. 1061; *United States v. Chicago R. Co.*, 143 F. R. 353; *United States v. Pittsburg R. Co.*, Id. 360; *Hedger v. Kimball*, 104 Id. 745; *Cleveland R. Co. v. Baker*, 91 Id. 224; *Malott v. Hood*, 201 Ill. 202.

Common carrier using cars in interstate  
traffic not equipped with draw-bars of  
standard height . . . . .

2 March, 1893, ss. 5,  
6; 27 Stat. 531.

See Act of March 2, 1903, c. 976 (32 St. 943). *St. Louis & Iron Mountain R. Co. v. Taylor*, 210 U. S. 281, 52 L. ed. 1061; *Atchison R. Co. v. United States*, 172 F. R. 194; *Chicago, B. & Q. R. Co. v. United States*, 170 Id. 556; *United States v. Baltimore & O. R. Co.*, Id. 456; *United States v. Illinois Cent. R. Co.*, Id. 542; *Chicago, M. & St. P. R. Co. v. United States*, 165 Id. 423; *United States v. Philadelphia R. Co.*, 162 Id. 403, 405; *Neal v. St. Louis R. Co.*, 71 Ark. 445, 448.

Common carrier failing to make monthly  
report to Interstate Commerce Com-  
mission of all accidents . . . . .

3 March, 1901, ss. 1,  
2; 31 Stat. 1446.

Using locomotive not equipped with  
proper ash pan . . . . .

30 May, 1908, s. 3;  
35 Stat. 476.

*Chapter Four. — Care of animals in transit.*

Confining live stock longer than twenty-eight hours without unloading for rest, water, and food . . . . .

R. S., s. 4386.

29 June, 1906, ss. 1-5; 34 Stat. 607.

United States *v.* Atlantic Coast Line R. Co., 173 F. R. 764; United States *v.* Stockyards Term. Co., 172 Id. 452; United States *v.* Southern Pac. Co., Id. 909; United States *v.* Pere Marquette R. Co., 171 Id. 586; United States *v.* Union Pac. R. Co., 169 Id. 65; St. Louis R. Co. *v.* United States, Id. 69; United States *v.* New York C. & St. R. Co., 168 Id. 699; United States *v.* Sioux City Yards Co., 167 Id. 126; United States *v.* Atchison R. Co., 166 Id. 160; New York C. & H. R. Co. *v.* United States, 165 Id. 833; Montana Cent. R. Co. *v.* United States, 164 Id. 400; United States *v.* Oregon R. & Nav. Co., 163 Id. 640; United States *v.* Southern Pac. Co., 162 Id. 412; United States *v.* Sioux City Stock Yards Co., Id. 556; United States *v.* Oregon Short Line Co., 160 Id. 526; United States *v.* Baltimore R. Co., 159 Id. 33; United States *v.* Southern Pac. Co., 157 Id. 459; United States *v.* Louisville R. Co., 157 Id. 979.

The following decisions are under U. S. Rev. Sts. § 4386 *et seq.*:

United States *v.* Harris, 177 U. S. 305, 44 L. ed. 780, 85 F. R. 533; Southern Pac. Co. *v.* Arnett, 126 F. R. 75; United States *v.* St. Louis & San Francisco R. R. Co., 107 Id. 870; Cotting *v.* Kansas City Stock Yards Co., 82 Id. 839; Newport News Co. *v.* United States, 61 Id. 488; Missouri Pac. R. Co. *v.* Texas R. Co., 41 Id. 913; Missouri Pac. R. Co. *v.* Hall, 66 Id. 868; *In re* Debs, 158 U. S. 564, 580, 39 L. ed. 1092; Chesapeake & Ohio R. Co. *v.* American Exchange Bank, 92 Va. 495; Brockway *v.* American Express Co., 168 Mass. 257; Burns *v.* Chicago R. Co., 104 Wis. 646; Vaughn *v.* Wabash R. Co., 145 Mo. 57; Fort Worth R. Co. *v.* Daggett, 87 Tex. 322; Chicago, B. & R. Co. *v.* Slattery, 76 Neb. 721; Texas & P. R. Co. *v.* Berchfield, 19 Tex. Civ. App. 228; Galveston R. Co. *v.* Warnken, 12 Id. 645; Gulf R. Co. *v.* Gray, 87 Tex. 312; Hale *v.* Missouri Pac. R. Co., 36 Neb. 266; Regan *v.* Adams Express Co., 49 La. Ann. 1579; Flint *v.* Boston & Maine R., 73 N. H. 141;

United States *v.* Louisville & N. R. Co., 18 F. R. 480; United States *v.* Boston & Albany R. Co., 15 Id. 209; United States *v.* East Tennessee R. Co., 13 Id. 642; Illinois Cent. R. Co. *v.* Eblin, 114 Ky. 817; Cincinnati R. Co. *v.* Gregg, 25 Ky. Law Rep. Pt. 2-2329.

*Chapter Six. — Arbitration between carriers and employees.*

Employer demanding agreement of employee not to join union, threatening him with loss of employment, etc. . . . 1 June, 1898, s. 10; 30 Stat. 428.

*Chapter Seven. — Hours of service of employees.*

Common carriers requiring employees to remain on duty longer than 16 hours; train dispatchers and telegraph operators longer than 9 and 13 hours . . . 4 March, 1907, ss. 2, 3; 34 Stat. 1416.

State *v.* Chicago R. Co., 136 Wis. 407; State *v.* Missouri Pac. R. Co., 212 Mo. 658. See State *v.* Northern Pac. R. Co., 36 Mont. 582; State *v.* Northern Pac. R. Co., 102 Pac. 876.

## TITLE LII

### COMBINATIONS IN RESTRAINT OF TRADE

Making contract or engaging in combination, etc., in restraint of trade . . . 2 July, 1890, s. 1; 26 Stat. 209.

Cont'l Wall Paper Co. *v.* Voight, 212 U. S. 227, 53 L. ed. 486; United States *v.* Standard Oil Co., 173 F. R. 177; Union Pac. Coal Co. *v.* United States, Id. 737; United States *v.* Kissel, Id. 823; Arkansas Brokerage Co. *v.* Dunn, Id. 899; United States *v.* American Naval Stores Co., 172 Id. 455; Bigelow *v.* Calumet & Hecla Co., 167 Id. 721; Blount Mfg. Co. *v.* Yale & Towne Mfg. Co., 166 Id. 555; Ames *v.* American Tel. & Tel. Co., Id. 820; Monarch Tobacco Works *v.* American Tobacco Co., 165 Id. 774; United States Tobacco Co. *v.* American Tobacco Co., 163 Id. 701; Meeker *v.* Lehigh Valley R. Co., 162 Id. 354; Pennsylvania Sugar Co. *v.* American Sugar Co., 160 Id. 144; American Union Coal Co. *v.* Pennsylvania R. Co., 159 Id. 278;

State *v.* Standard Oil Co., 218 Mo. 1; State *v.* Duluth Board of Trade, 107 Minn. 506; Swift & Co. *v.* United States, 196 U. S. 375, 49 L. ed. 518, 122 F. R. 529; Cornell *v.* Coyne, 192 U. S. 418, 429, 48 L. ed. 504; Lottery Case, 188 Id. 321, 359, 47 L. ed. 492; Northern Securities Co. *v.* United States, 193 Id. 197, 48 L. ed. 679; Connolly *v.* Union Sewer Pipe Co., 184 Id. 540, 543, 46 L. ed. 679; Board of Trade *v.* Christie Grain Co., 198 U. S. 236, 49 L. ed. 1036; Field *v.* Barber Asphalt Co., 194 U. S. 618, 48 L. ed. 1142; Anderson *v.* United States, 171 Id. 604, 43 L. ed. 300; Hopkins *v.* United States, Id. 578, 43 L. ed. 290, 82 F. R. 529; Addyston Pipe Co. *v.* United States, 175 U. S. 211, 44 L. ed. 136, 85 F. R. 271, 78 Id. 712; United States *v.* Trans-Missouri Freight Assn., 166 U. S. 290, 41 L. ed. 1007; United States *v.* Joint Traffic Assn., 171 Id. 505, 43 L. ed. 259, 76 F. R. 845; Dickerman *v.* Northern Trust Co., 176 U. S. 181, 44 L. ed. 423; Cincinnati Packet Co. *v.* Bay, 200 U. S. 179, 182, 50 L. ed. 428; Minnesota *v.* Northern Securities Co., 194 Id. 48, 48 L. ed. 870, 123 F. R. 692; Montague *v.* Lowry, 193 U. S. 38, 48 L. ed. 608; Bement *v.* National Harrow Co., 186 Id. 70, 46 L. ed. 1058; John D. Park Co. *v.* Hartman, 153 F. R. 24; Hadley Dean Glass Co. *v.* Highland Glass Co., 143 Id. 242; Loder *v.* Jayne, 142 Id. 1010; Rice *v.* Standard Oil Co., 134 Id. 464; Davis *v.* A. Booth & Co., 131 Id. 31, 127 Id. 875; Phillips *v.* Iola Cement Co., 125 Id. 593; Board of Trade *v.* Christie Grain Co., 121 Id. 608; Robinson *v.* Suburban Brick Co., 127 Id. 804; Whitwell *v.* Continental Tobacco Co., 125 Id. 454; Chesapeake Fuel Co. *v.* United States, 115 Id. 610, 105 Id. 93; Foot *v.* Buchanan, 113 Id. 156; Ellis *v.* Inman, 131 Id. 182, 124 Id. 956; Gibbs *v.* McNeeley, 118 Id. 120, 107 Id. 210, 102 Id. 594; Delaware R. Co. *v.* Frank, 110 Id. 689; General Electric Co. *v.* Wise, 119 Id. 922; Otis Elevator Co. *v.* Geiger, 107 Id. 131; Gulf Co. *v.* Miami Co., 86 Id. 407; United States *v.* Cassidy, 67 Id. 698; United States *v.* Coal Dealers' Assn., 85 Id. 252; The Charles E. Wisehall, 74 Id. 802; Prescott R. Co. *v.* Atchison R. Co., 73 Id. 438; United States *v.* Debs, 64 Id. 724; United States *v.* Elliott, Id. 27; Thomas *v.* Cincinnati R. Co., 62 Id. 803; *In re* Grand Jury, Id. 840; Waterhouse *v.* Comer, 55 Id. 149;

United States *v.* Workingmen's Council, 54 Id. 994; *In re* Greene, 52 Id. 104; American Biscuit Co. *v.* Klotz, 44 Id. 721; Manheim Ins. Co. *v.* Erie & W. Trans. Co., 72 Minn. 357; Clark *v.* Needham, 125 Mich. 84; Getz Bros. *v.* Federal Salt Co., 147 Cal. 115, 119; Bancroft *v.* Union Co., 72 N. H. 402, 409; Commonwealth *v.* Strauss, 191 Mass. 545, 555.

Monopolizing, etc., trade among the sev-  
eral States, etc. . . . . 2 July, 1890, s. 2;  
26 Stat. 209.

Cont'l Wall Paper Co. *v.* Voight & Sons Co., 212 U. S. 227, 53 L. ed. 486; United States *v.* Standard Oil Co., 173 F. R. 177; United States *v.* Kissel, Id. 823; Arkansas Brokerage Co. *v.* Dunn, Id. 899; United States *v.* American Naval Stores Co., 172 Id. 455; *In re* Hale, 139 Id. 496; Bement *v.* National Harrow Co., 186 U. S. 70, 46 L. ed. 1058; Montague *v.* Lowry, 193 U. S. 38, 48 L. ed. 608, 115 F. R. 27, 106 Id. 38, 98 Id. 817; United States *v.* E. C. Knight Co., 156 U. S. 1, 39 L. ed. 325, 60 F. R. 306, 934; National Phono. Co. *v.* Schlegel, 128 F. R. 733, 117 Id. 624; United States Consolidated Co. *v.* Griffin, 126 Id. 364; Lowenstein *v.* Evans, 69 Id. 908; Dueber Watch Co. *v.* E. Howard Watch Co., 66 Id. 637, 55 Id. 851; *In re* Corning, 51 Id. 205; *In re* Terrell, Id. 213; Ceballos *v.* Munson Steamship Line, 112 N. Y. App. Div. 352, 93 Id. 593; White Star Line *v.* Star Line, 141 Mich. 604; Bancroft *v.* Union Embossing Co., 72 N. H. 402.

Making contract in restraint of trade, etc.,  
in Territories or District of Columbia 2 July, 1890, s. 3;  
26 Stat. 209.

United States *v.* Virginia-Carolina Co., 163 F. R. 66; Leonard *v.* Abner-Drury Co., 25 App. D. C. 161.

Persons entering into combination, trust,  
etc., with another for purpose of im-  
porting goods, intended to operate in  
restraint of trade, increase prices, etc. . 24 July, 1897, s. 34;  
30 Stat. 213.



## TITLE LIV

## REGULATIONS OF EXPORTATION, IMPORTATION, AND TRANSPORTATION OF ANIMALS, FOODS, AND INSECT PESTS

*Chapter One. — Inspection of animals, meats, and dairy products for exportation.*

Rules concerning inspection, etc., of animals intended for exportation, and penalties for violation . . . . .

30 June, 1906; 34 Stat. 674.  
4 March, 1907; 34 Stat. 1260.

26 A. G. Op. 50, 166.

Bribery of inspectors of meats and of animals intended for slaughter . . . .

30 June, 1906; 34 Stat. 678.  
4 March, 1907; 34 Stat. 1264.

*Chapter Two. — Protection against importation and transportation of infected animals, meats, and adulterated foods.*

Violation of regulations to prevent introduction of contagious diseases of animals . . . . .

30 Aug., 1890, s. 10; 26 Stat. 417.  
2 Feb., 1903, ss. 2, 3; 32 Stat. 792.

Importation of diseased animals . . . .

30 Aug., 1890, s. 6; 26 Stat. 416.

21 A. G. Op. 460.

Transportation of live stock from quarantined districts . . . . .

3 March, 1905, ss. 2, 6; 33 Stat. 1264.

Moving live stock from quarantined district contrary to regulations. . .

3 March, 1905, ss. 4, 6; 33 Stat. 1265.

United States v. Louisville & N. R. Co., 165 F. R. 936.

Violating regulation respecting exportation and transportation of live stock from infected district . . . . .

29 May, 1884, ss. 4, 5; 23 Stat. 32.  
2 Feb., 1903, ss. 1, 3; 32 Stat. 791.

Lottery Case, 188 U. S. 321, 358, 47 L. ed. 492; *Mullen v. Western Union Beef Co.*, 173 Id. 116, 43 L. ed. 635, 9 Col. App. 497; *Grayson v. Lynch*, 163 U. S. 468, 41 L. ed. 230; *Davis v. Texas & P. R. R. Co.*, 12 Tex. Civ. App. 427.

*Chapter Three. — Regulation of importation and transportation of foods, drugs, grain, and seeds.*

Importation and transportation of adul-

terated or misbranded foods or drugs . 30 June, 1906, s. 2; 34 Stat. 768.

*United States v.* 779 Cases of Molasses, 174 F. R. 325; *United States v.* Sixty-eight Cases of Syrup, 172 Id. 781; *United States v.* Sixty-five Casks Liquid Extracts, 170 Id. 449; *Woolner v. Rennick*, Id. 662; *In re Wilson*, 168 Id. 566; *United States v.* Six Hundred and Fifty Cases of Tomato Catsup, 166 Id. 773; *United States v.* Fifty Barrels of Whiskey, 165 Id. 966; *Crossman v. Lurman*, 171 N. Y. 329; *State v. Intox. Liquors*, 104 Me. 502; 26 A. G. Op. 216, 262, 311, 449, 474, 546.

Manufacture of adulterated foods and drugs in Territories and District of Columbia . . . . .

30 June, 1906, s. 1; 34 Stat. 768.

*Chapter Four. — Regulation of transportation of insect pests.*

Transporting certain insect pests . . . 3 March, 1905, ss. 1, 4; 33 Stat. 1269.

Sending insect pests by mail . . . . . 3 March, 1905, s. 2; 33 Stat. 1270.

*Chapter Five. — Regulation of preparation, sale, and interstate traffic in viruses, serums, etc.*

Violation of rules concerning production, inspection, and sale of viruses, serums, etc. . . . .

1 July, 1902, ss. 1-7; 32 Stat. 728.

|  |  |
|--|--|
| Interfering with officer or employee of<br>Treasury Department . . . . . | 1 July, 1902, ss. 6, 7;<br>32 Stat. 728. |
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## TITLE LV

IMPORTATION OF ADULTERATED TEAS AND IMPORTATION OF  
OPIUM BY CHINESE PROHIBITED

*Chapter Two. — Importation of opium by Chinese, and exportation to China by citizens of the United States, prohibited.*

|   |                                       |
|---|---------------------------------------|
| Importing of opium by Chinese . . . . . | 23 Feb., 1887, s. 1;<br>24 Stat. 409. |
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|   |                                       |
|---|---------------------------------------|
| Citizens of United States importing opium<br>into open ports of China . . . . . | 23 Feb., 1887, s. 3;<br>24 Stat. 409. |
|---|---------------------------------------|

*Chapter Three. — Regulation of importation, transportation, and exportation of falsely stamped merchandise, and the landing and sale of sponges.*

|  |   |
|--|---|
| Stamping the words "United States<br>Assay" on goods manufactured from<br>gold or silver which enter into Inter-<br>state Commerce . . . . . | 21 Feb., 1905, ss. 1,<br>2; 33 Stat. 732. |
|--|---|

|   |   |
|---|---|
| Falsely stamping as to fineness or quality<br>of metal articles manufactured from<br>gold or silver . . . . . | 13 June, 1906, ss. 1,<br>2, 3, 5; 34 Stat.<br>260 |
|---|---|

|   |   |
|---|---|
| Stamping the words "sterling" or "coin"<br>on gold or silver-plated merchandise . . . . . | 13 June, 1906, ss. 4,<br>5; 34 Stat. 261. |
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|   |                                 |
|---|---------------------------------|
| Unlawful landing, delivery, or sale of<br>sponges . . . . . | 20 June, 1906; 34<br>Stat. 313. |
|---|---------------------------------|

## TITLE LVII

## LIGHTS AND BUOYS

|  |                                       |
|--|---------------------------------------|
| Maintaining light, or other aid to naviga-<br>tion, without permission of Light<br>House Board . . . . . | 20 June, 1906, s. 3;<br>34 Stat. 324. |
|--|---------------------------------------|

- Failure to maintain lights on bridges over  
navigable waters . . . . . 14 May, 1908, s. 5;  
35 Stat. 162.

## TITLE LVIII

## PROTECTION OF FUR SEALS

- Killing of fur seals within the limits of  
Alaska, including Bering Sea . . . . R. S., s. 1956.  
2 March, 1889, s. 3;  
25 Stat. 1009.  
3 March, 1899, s. 173;  
30 Stat. 1279.

*In re* Cooper, 143 U. S. 472, 36 L. ed. 232; *The James G. Swan*,  
77 F. R. 473, 50 Id. 108; *United States v. The Jane Gray*, 77 Id.  
908; *The La Ninfa*, 75 Id. 513, 49 Id. 575; *United States v. North*  
*American Co.*, 74 Id. 145; *The Alexander*, 60 Id. 914; *The Ko-*  
*diak*, 53 Id. 126; *United States v. Moseley*, 8 Id. 688; *The Chal-*  
*lenge*, 1 Alaska, 70; 39 Int. Rev. Rec. 29, 78, 125; 30 Am. L. Rev.  
592; 21 A. G. Op. 234, 333, 346, 466, 583.

- Killing of fur seals on St. Paul and St.  
George islands . . . . . R. S., s. 1960, 1961.  
3 March, 1899, ss.  
177, 178; 30 Stat.  
1280.

*North American Com. Co. v. United States*, 171 U. S. 110, 43  
L. ed. 98; 25 A. G. Op. 497; 20 Id. 51.

- Killing female seals, or seals less than one  
year old . . . . . R. S., s. 1961.  
3 March, 1899, s. 178;  
30 Stat. 1280.

- Killing seals on St. Paul and St. George  
Islands, without authority of lessees . . R. S., s. 1961, 1967.  
*Citizen of United States equipping vessel*  
*for killing, or killing fur seals in certain*  
*parts of Pacific Ocean* . . . . . 29 Dec., 1897, ss. 1, 2,  
3; 30 Stat. 226.

## APPENDIX

## TITLE LX

## LABOR

*Chapter Two. — Hours of labor.*

Requiring employees on Government  
work to labor more than eight hours per  
day, etc. . . . .

1 Aug., 1892, s. 2;  
27 Stat. 340.

*Ellis v. United States*, 206 U. S. 246, 51 L. ed. 1047; *United States v. Breakwater Co.*, 174 F. R. 78; *United States v. Moses*, 126 Id. 58, 116 Id. 526; *United States v. San Francisco Bridge Co.*, 88 Id. 891; *United States v. John Kelso Co.*, 86 Id. 304; *United States v. Jefferson*, 60 Id. 736; *United States v. Ollinger*, 55 Id. 959; 20 A. G. Op. 500.

## TITLE LXI

## IMMIGRATION

*Chapter One. — Regulation of immigration.*

Importation of women for purpose of pros-  
titution, or for other immoral purpose;  
harboring for immoral purpose alien  
woman or girl within three years after  
entry into United States . . . . .

20 Feb., 1907, s. 3;  
34 Stat. 899.

*Keller v. United States*, 213 U. S. 138, 53 L. ed. 737; *United States v. Bitty*, 208 Id. 393, 52 L. ed. 543, 155 F. R. 938; *United States v. Villet*, 173 Id. 500; *Looe Shee v. North*, 170 Id. 566; *Ex parte Durand*, 160 Id. 558; *In re Guayde*, 112 Id. 415; *United States v. Pagliano*, 53 Id. 1001; *United States v. Johnson*, 19 Blatch. 257, 7 F. R. 453; *Ex parte Ah Fook*, 49 Cal. 402.

Aiding anarchist to enter the United  
States . . . . .

20 Feb., 1907, s. 38;  
34 Stat. 908.

*Turner v. Williams*, 194 U. S. 279, 48 L. ed. 979, 126 F. R. 253.

- Soliciting the importation of contract laborers . . . . . 20 Feb., 1907, ss. 4, 5; 34 Stat. 900.
- United States *v.* Stevenson, 215 U. S. 190; Hepner *v.* United States, 213 Id. 103, 53 L. ed. 720; *Ex parte* Li Dick, 174 F. R. 674; United States *v.* Tsokas, 163 Id. 129; 26 A. G. Op. 199.
- Advertising to encourage immigration . . . 20 Feb., 1907, ss. 4, 5, 6; 34 Stat. 900.
- 26 A. G. Op. 199, 410.
- Soliciting of immigration by vessel owners 20 Feb., 1907, ss. 4, 5, 7; 34 Stat. 900.
- Illegal bringing in or landing of aliens . . . 20 Feb., 1907, s. 8; 34 Stat. 900.
- United States *v.* Capella, 169 F. R. 890; *Ex parte* Watchorn, 160 Id. 1014; 26 A. G. Op. 180.
- Bringing in persons afflicted with loathsome or contagious disease . . . . . 20 Feb., 1907, s. 9; 34 Stat. 901.
- Ocean Steam Nav. Co. *v.* Stranahan, 214 U. S. 320, 53 L. ed. 1013; International Mercantile Co. *v.* Stranahan, Id. 344, 53 L. ed. 1024; United States *v.* Nakashima, 160 F. R. 842; 26 A. G. Op. 381.
- Copies of immigration laws to be posted up in foreign countries . . . . . 3 March, 1893, s. 8; 27 Stat. 570.
- List of alien passengers to be furnished immigration officers by master of vessel 20 Feb., 1907, ss. 12, 15; 34 Stat. 901.
- United States *v.* Four Hundred and Twenty Dollars, 162 F. R. 803; United States *v.* Nakashima, 160 Id. 842.
- Officers of vessels permitting the illegal landing of aliens . . . . . 20 Feb., 1907, s. 18; 34 Stat. 904.
- Niven *v.* United States, 169 F. R. 782; Frank Waterhouse & Co. *v.* United States, 159 Id. 876.

## Return by steamship company of aliens

illegally landed . . . . . 20 Feb., 1907, s. 19;  
34 Stat. 904.

*Botis v. Davies*, 173 F. R. 996; *United States v. Hemet*, 156 Id. 285; 26 A. G. Op. 624.

*Chapter Two. — Exclusion of Chinese persons.*

Master of vessel refusing or neglecting to  
deliver list of Chinese persons on  
board . . . . .

5 July, 1884, s. 8;  
23 Stat. 117.

Master of vessel unlawfully bringing into  
the United States Chinese persons . . .

13 Sept., 1888, ss. 9,  
10; 25 Stat. 478.  
29 April, 1902, s. 1;  
32 Stat. 176.

*Ex parte Li Dick*, 174 F. R. 674; *United States v. Durie*, 170 Id. 624; *United States v. Wood*, 168 Id. 438, 159 Id. 187; *United States v. Graham*, 164 Id. 654.

Bringing into United States by land

Chinese person . . . . . 5 July, 1884, s. 11;  
23 Stat. 117.

*United States v. Olsen*, 57 F. R. 579; *United States v. Trumbull*, 46 Id. 755; *Unused Tag Case*, 21 Id. 701.

Forgery of certificate issued to Chinese  
person; false personation . . . . .

13 Sept., 1888, s. 71;  
25 Stat. 479.  
5 May, 1892, s. 8;  
27 Stat. 26.  
29 April, 1902; 32  
Stat. 176.

Violation of other provisions of Chinese  
exclusion laws . . . . .

5 July, 1884, s. 16;  
23 Stat. 118.

*Chapter Three. — The cooley trade.*

Building, equipping, etc., vessel for the  
cooley trade . . . . .

R. S., s. 2160.

Receiving or transporting coolies . . . .

R. S., s. 2161.

Transporting, etc., subject of China,  
Japan, etc., without consent . . . . .

3 March, 1875, s. 2;  
18 Stat. 477.

- Contracting or attempting to contract  
to supply cooley labor . . . . . 3 March, 1875, s. 4;  
18 Stat. 477.

## TITLE LXII

### NATURALIZATION AND EXPATRIATION

#### *Chapter One. — Naturalization.*

- Clerk of court or other person illegally  
issuing certificate of naturalization . . 29 June, 1906, s. 18;  
34 Stat. 602.
- Clerk or other officer of court neglecting  
to render accounts of money received in  
naturalization proceedings . . . . . 29 June, 1906, s. 20;  
34 Stat. 602.
- Clerk of court or other officer issuing false  
certificates or acknowledgments . . . 29 June, 1906, s. 22;  
34 Stat. 603.
- Fraudulently obtaining naturalization . . 29 June, 1906, s. 23;  
34 Stat. 603.

## TITLE LXIV

### CIVIL RIGHTS

- Jurors not to be excluded on account of  
race or color . . . . . 1 March, 1875, s. 4;  
18 Stat. 336.
- Gibson *v.* Mississippi, 162 U. S. 565, 40 L. ed. 1075; Neal *v.* Dela-  
ware, 103 Id. 370, 26 L. ed. 567; *Ex parte* Virginia, 100 Id. 339, 25  
L. ed. 676; Cases of County Judges, 3 Hughes, 576.
- Marshal or deputy refusing to execute  
process issued under provisions of this  
Title . . . . . R. S., s. 5517.<sup>1</sup>

## TITLE LXVI

### THE SEAT OF GOVERNMENT

#### *Chapter One. — Public buildings, parks, and wharves.*

- Tapping, without authority, pipes laid  
by United States . . . . . R. S., s. 1803.
- Willfully breaking, etc., water pipes in  
District of Columbia . . . . . R. S., s. 1804.



- Maliciously making water-supply of District of Columbia impure . . . . . R. S., s. 1806.
- Chapter Two. — Capitol building and grounds.*
- Regulations concerning use of Capitol grounds and penalties for violation . . . 1 July, 1882, ss. 1-7; 22 Stat. 126.

## TITLE LXVII

### RAILWAYS AND TELEGRAPH COMPANIES

*Chapter Two. — Submarine cables.*

- Breaking, injuring, or aiding or abetting the injuring of submarine cable . . . 29 Feb., 1888, s. 1; 25 Stat. 41.
- Breaking submarine cable by culpable negligence . . . . . 29 Feb., 1888, s. 2; 25 Stat. 41.
- The William H. Bailey, 100 F. R. 115.
- Rules to be observed by master of vessel laying cable, and other vessels in proximity, and penalties for violation . . 29 Feb., 1888, s. 4; 25 Stat. 41.
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